

**45-DAY PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES**

Section/Topic	Comment Number(s)	Summarized Comment	Department of Justice Response
770, Title and Scope.	20.01, 21.01	The purpose conflicts with the Initial Statement of Reasons (ISOR) because this section prohibits any “official action” based on information in the database, yet a patrol officer engages in “official action” based on information in the database after performing a records check on an individual.	The Department accepts this comment and has added subdivision (d) to section 770.
	30.03, 73.5	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>These regulations should make clear that officers testifying as experts are precluded from referring to CalGang in opining that a defendant is a gang member or that persons other than the defendant are gang members.</p>	The Department accepts this comment in part and has added subdivision (e) to section 770, which prohibits a person’s designation in a shared gang database from being used as evidence of crime or as probative of any matter in any phase of a criminal proceeding. However, ultimately the court, not the Department, has discretion to determine the type of evidence that is admissible in court.
	30.04	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“The regulations... fail to address whether an officer testifying as an expert may rely on CalGang during the prosecution’s rebuttal case.”</p>	The Department accepts this comment and has added subdivision (e) to section 770, which prohibits a person’s designation in a shared gang database from being used as evidence of crime or as probative of any matter in any phase of a criminal proceeding. However, ultimately the court, not the Department, has discretion to determine the type of evidence that is admissible in court.
	65.02	“[T]he Department of Justice should forbid law enforcement officers from handcuffing individuals, conducting pat downs and searches based on	The Department accepts this comment and has added subdivision (d) to section 770.

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		one’s inclusion in any shared gang database.”	
770.2, Definition of Key Terms	20.02, 21.02, 30.04, 73.4	These regulations fail to define “official action.”	The Department accepts this comment and has removed any reference to “official action” and has added subdivision (d) to section 770.
	46.01	“Definitions of ‘gang member’ and ‘gang associate’ should expressly state that these definitions are solely for the purposes of entry into the database and for administrative review of requests for removal under Penal Code section 186.34 and are not intended as guidance for court petitions under Penal Code section 186.35.”	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35.
	65.03	Some of these definitions are ambiguous, overbroad, and inconsistent with an accurate database.	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations; however, the Department has made changes to specific definitions in response to other comments made by this commenter.
770.2(c), “Audit” definition	20.03, 21.03, 65.04	This definition should require objective actors conduct the examination.	The Department accepts this comment in part and has added subdivision (g) to section 775.2 to ensure that the Department reviews any audits and the corresponding results.
	20.03, 21.03	<i>This comment references the CalGang database but has been included as the Department made a</i>	The Department accepts this comment in part and has added subdivision (g) to section 775.2 to

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		<p><i>change to the Shared Gang Databases regulations in response.</i></p> <p>There is significant risk that the CalGang database will be audited by individuals who were part of the CalGang Executive Board, which was divested of its oversight power by Assembly Bill 90.</p>	ensure that the Department reviews any audits and the corresponding results. Additionally, the Department will continue to conduct separate audits.
770.2(d), “Contact” definition	20.04, 21.04, 65.05, 71.17	This definition does not require that observations be made lawfully.	The Department accepts this comment and has incorporated “lawful” into this definition.
770.2(e), “Criminal predicate” definition	20.05, 21.05	“The Initial Statement of Reasons cites to CFR Title 28 Section 23.20(c), but the proposed definition significantly expands the conduct...”	The Department has removed the definition of “criminal predicate.”
	20.05, 21.05, 65.06	The definition of criminal predicate will encompass innocent conduct, such as a mother who provides shelter and clothing for a child who commits a crime.	The Department has removed the definition of “criminal predicate.”
770.2(h), “Gang Associate” definition	2.1, 2.4, 26.20, 31.7, 32.1, 39.8, 46.06, 67.1, 71.22	The Gang Associate category should be eliminated.	The Department accepts this comment and has combined Gang Member and Gang Associate into one definition, Gang Member or Associate.
	2.4	“[T]he reasonable suspicion required is vague and ambiguous.”	The Department accepts this comment and has added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation. Additionally, the Department has combined Gang Member and Gang Associate into one definition, Gang Member or Associate.

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	20.43, 21.43, 71.13	The distinction between Gang Member and Gang Associate should be eliminated.	The Department accepts this comment and has combined Gang Member and Gang Associate into one definition, Gang Member or Associate.
	58.1	This category is ill-defined and could include people such as community workers, intervention workers, teachers, and family members for associating with people.	The Department accepts this comment and has made significant changes to the criteria section, 771.8, in an effort to prevent erroneous inclusion of the aforementioned people. Furthermore, the Department has also added subdivisions (a)(4)(A) and (a)(4)(B) to section 771.8.
770.2(m), "Offense consistent with gang activity" definition	1.1, 33.1, 35.1, 57.1, 66.1	This definition is too limiting. Gang activity goes beyond the crimes listed in Penal Code section 186.22.	The Department accepts this comment in part and has extended the scope of this definition to include all other felony offenses that have a nexus to gang activity. However, the Department constructed this definition based on the offenses that the Legislature determined were consistent with gang activity in subdivision (a)(1) of Penal Code section 186.34 and the Department maintains the decision not to extend this definition to include misdemeanor offenses to prevent this definition from becoming overbroad.
	1.1, 33.1	This definition does not reference Penal Code section 186.22(d) which includes public offenses punishable as a felony or a misdemeanor committed as a gang crime.	No change has been made in response to this comment because subdivision (d) of Penal Code section 186.22 references convictions which are not applicable to this definition or these regulations.
	1.1	<i>This comment references the CalGang Database regulations but</i>	The Department accepts this comment in part and has extended

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		<p><i>has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>This definition counters the purpose listed in section 750.2.</p>	<p>the scope of this definition to include all other felony offenses that have a nexus to gang activity. However, the Department constructed this definition based on the offenses that the Legislature determined were consistent with gang activity in subdivision (a)(1) of Penal Code section 186.34 and the Department maintains the decision not to extend this definition to include misdemeanor offenses to prevent this definition from becoming overbroad.</p>
	20.06, 21.06, 65.07	<p>This definition introduces an unfair level of ambiguity by referencing “any felonious criminal conduct” in subdivision (a) of Penal Code section 186.22. The proposed regulations do not sufficiently narrow the conduct that will be considered for inclusion in the CalGang or other shared database.</p>	<p>No change has been made in response to this comment as the Department has determined that this definition is consistent with the scope of the Department’s authority in subdivision (1)(2) of Penal Code section 186.36 and aligns with the definition of criminal street gang in subdivision (a)(1) of Penal Code section 186.34.</p>
	27.05	<p>This definition will sweep up too many people who are not gang participants.</p>	<p>The Department accepts this comment and has added language to this definition to require a nexus between the offense(s) underlying the arrest and gang activity.</p>
	33.1	<p>The definition should include all crimes in the Penal Code.</p>	<p>The Department accepts this comment in part and has extended the scope of this definition to include all other felony offenses that have a nexus to gang activity. However, the Department constructed this definition based on the offenses that the Legislature determined were consistent with gang activity in</p>

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			subdivision (a)(1) of Penal Code section 186.34 and the Department maintains the decision not to extend this definition to include misdemeanor offenses to prevent this definition from becoming overbroad.
770.2(o), “Reasonable suspicion” definition	20.07, 21.07, 71.18	This definition of reasonable suspicion is unfair and should be eliminated.	No change has been made in response to this comment as this definition is consistent with Code of Federal Regulations, Title 28, Part 23 and Model Standards.
	20.07, 21.07, 65.08, 71.18	This definition is not consistent with the legal definition of reasonable suspicion provided by the United States Supreme Court. Additionally, the definition references “sufficient facts” which introduces an unacceptable level of ambiguity and subjectivity.	No change has been made in response to this comment as this definition is consistent with Code of Federal Regulations, Title 28, Part 23 and Model Standards.
770.2(q), “Reliable source” definition	20.08, 21.08	This definition does not require that the informant be tested as AB 90 suggests.	The Department accepts this comment and has added language to explicitly forbid an untested informant in the new subdivision (a)(3)(B) of section 771.8.
	20.08, 21.08, 65.09	This definition does not require that the informant be tested such as the Supreme Court case referenced in the ISOR.	The Department accepts this comment and has added language to explicitly forbid an untested informant in the new subdivision (a)(3)(B) of section 771.8.
	20.08, 21.08	“A reliable source should be: (1) an adult, (2) who is not affiliated with law enforcement or involved with the criminal justice system, (3) that has an interest in providing accurate information to law enforcement, (4)	Regarding comment (1), the Department accepts this comment and has added subdivision (a)(3)(B) to section 771.8. Regarding comment (2), the Department accepts this comment in part and has added

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		<p>who is not receiving any kind of benefit by providing information to law enforcement, (5) who personally observed the information that makes up the basis of her or his opinion, (6) who was not under the influence of drugs or alcohol at the time of making the observations, and (7) is not under the influence of drugs or alcohol at the time of identifying the suspected gang member or gang associate.”</p>	<p>language in the new subdivision (a)(3)(B) of section 771.8 to prevent the law enforcement officer conducting the interview or completing the source document to satisfy criterion (a)(3) from using themselves as a reliable source to satisfy the criterion. However, the Department believes that people who are involved with the criminal justice system should be deemed reliable unless proven otherwise. Additionally, there are individuals with firsthand experience, such as a probation officer or gang expert, that should be permitted to consult with a law enforcement officer and provide valuable intelligence to solve gang-related crimes. Regarding comment (3), no change has been made in response to this comment as the Department found this recommendation to be too broad and subjective; however, the Department has added language in the new subdivision (a)(3)(B) of section 771.8 to prevent rival gang members and untested informants from being reliable sources. Regarding comment (4), no change has been made in response to this comment because as the Department found this recommendation to be too broad and subjective. Additionally, these regulations require that the law enforcement officer act reasonably when determining whether a source is reliable based on the totality of the circumstances and past and present indications of veracity. Regarding</p>

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			<p>comment (5), the Department accepts this comment in part and has included a new modified version of subdivision (a)(3) in section 771.8 which requires that the reliable source’s opinion be based on reasons consistent with the criteria set forth herein, and new documentation requirements to support the opinion of the reliable source. Regarding comments (6) and (7), no change has been made in response to these comments because these regulations require that the law enforcement officer act reasonably when determining whether a source is reliable based on the totality of the circumstances and past and present indications of veracity and it is difficult to estimate in every situation whether a person is under the influence of drugs or over the legal alcohol limit without requiring the person to take a sobriety or drug test.</p>
	20.27, 21.27, 71.08	This definition “undermines any notions of trustworthiness and reliability.”	<p>The Department accepts this comment in part and has included a new modified version of subdivision (a)(3) in section 771.8 and has added subdivisions (a)(3)(A) and (a)(3)(B) to section 771.8 to place limitations on what a reliable source may be based on and who a reliable source may be.</p>
	27.07, 72.1, 61.5	This definition should exclude children under 18 years old.	<p>The Department accepts this comment and has added subdivision (a)(3)(B) to section 771.8.</p>



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	62.4	“Restrictions on who is a reliable source are still too vague...”	The Department accepts this comment and has added subdivisions (a)(3)(A) and (a)(3)(B) to section 771.8 to place limitations on what a reliable source may be based on and who a reliable source may be.
	65.13	There are issues with the current definition and the accuracy and integrity of any database using this definition will be jeopardized.	The Department accepts this comment in part and has included a new modified version of subdivision (a)(3) in section 771.8 with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
770.2(u), “Source documents” definition	20.09, 21.09, 65.10	There is a need to guarantee that a source document is accurate and trustworthy because these regulations provide that they are the only basis for official action. There should be a requirement that source documents include any recording that was preserved, and an additional requirement that a recording in support of a criterion be made if reasonably possible.	No change has been made in response to this comment as the Department has taken into consideration the lack of availability of body-worn cameras or other recording devices to law enforcement agencies; however, the Department added subdivisions (e)(1) and (e)(2) to section 771.8 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited.
770.6, Limitations to Access Provided to an Out-of-State or a Federal Agency	20.10, 21.10, 27.03, 27.15, 32.5, 34.5, 63.5, 67.5, 71.19, 71.27	Allowing out-of-state and federal agencies access to the CalGang and other shared gang databases contradicts Assembly Bill (AB) 90 and these provisions should be removed because they are beyond the authority of the Department.	No change has been made in response to this comment because under subdivision (a)(3) of Penal Code section 186.34, out-of-state and federal agencies are included in the definition of “law enforcement agencies;” therefore, it is the

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			<p>Department’s interpretation that out-of-state agencies and federal agencies may request access to a shared gang database. When the Legislature amended AB 90 during the drafting process, it specifically removed subdivision (g) from Penal Code section 186.36 which would have explicitly forbid access to any federal agency, multistate agency, or agency of another state to access a shared gang database. (Sen. Amend to Assem. Bill 90 (2017-2018 Reg. Sess.) Sept. 8, 2017.) Following the removal of this subdivision, no language was incorporated that would otherwise suggest that it was still the intent of the Legislature for the Department to forbid access to the aforementioned parties.</p>
	20.10, 21.10	<p>“This section will not lead to the operation and implementation of a shared gang database that is fundamentally fair.”</p>	<p>The Department accepts this comment in part and has included a requirement that out-of-state agencies and federal agencies comply with these regulations. Additionally, the Department will be the only agency responsible for granting access to out-of-state agencies and federal agencies.</p>
	20.11, 21.11, 71.20	<p>These regulations do not justify how authorizing access to out-of-state agencies will be useful for crime prevention and investigation in California. Furthermore, it provides a loophole for this database to circumvent the California sanctuary law.</p>	<p>Regarding the comment concerning the access to out-of-state agencies, no change has been made in response to this comment because under subdivision (a)(3) of Penal Code section 186.34, out-of-state and federal agencies are included in the definition of “law enforcement agencies;” therefore, it is the</p>

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			<p>Department’s interpretation that out-of-state agencies and federal agencies may request access to a shared gang database. When the Legislature amended AB 90 during the drafting process, it specifically removed subdivision (g) from Penal Code section 186.36 which would have explicitly forbid access to any federal agency, multistate agency, or agency of another state to access a shared gang database. (Sen. Amend to Assem. Bill 90 (2017-2018 Reg. Sess.) Sept. 8, 2017.) Following the removal of this subdivision, no language was incorporated that would otherwise suggest that it was still the intent of the Legislature for the Department to forbid access to the aforementioned parties. Regarding the comment concerning the California sanctuary law, the Department accepts this comment in part and has added subdivision (c) to section 776.4 to prohibit the use of a shared gang database to enforce federal immigration law, unless required by a state or federal statute or regulation.</p>
	32.6, 71.28	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“Publicize, on the State Department of Justice website, any Memorandum of Understanding (MOU) that grants CalGang access to an agency or</p>	<p>Regarding the comment concerning publishing MOUs, no change has been made because MOUs are available upon request by submitting a Public Records Act request under Government Code sections 6250 through 6270.5. However, the Department has agreed to publish, on the Department’s website, the names of the agencies that enter into an</p>

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		individual, and update MOUs on an annual basis. The regulations must require termination of access for any agency or individual that fails to use the system in a way that is accurate, upholds all the regulations, and/or follows the requirements for notification to individuals who are added to the database, for appeals and for removals.”	MOU with the Department. Regarding the comment concerning the termination of access, section 776.6 covers the actions the Department takes, or instructs a System Administrator to take if a User and/or User Agency violates any policy or law governing shared gang databases, including these regulations.
	33.2	The Los Angeles County Sheriff’s Department reads “access” as direct access by an outside agency, and for that type of access, we agree that an MOU should be in place. I don’t believe we should be required to get an MOU for proxy requests to see if somebody is in the database. “The language in the regulation is potentially confusing because it says an outside agency ‘shall not utilize’ information from the database other than for criminal investigative purposes per the terms of the MOU.... I would argue that the MOU requirement applies only to direct access to the database by an outside agency.”	The Department accepts this comment and has added subdivision (g) to section 770.4.
	66.2	There is confusion regarding what “access” means.	No change has been made in response to this comment because the Department has defined the term “access” in subdivision (a) of section 770.2.
	74.3	“[E]liminate access to agencies outside of California...”	No change has been made in response to this comment because under subdivision (a)(3) of Penal Code section 186.34, out-of-state and

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			<p>federal agencies are included in the definition of “law enforcement agencies;” therefore, it is the Department’s interpretation that out-of-state agencies and federal agencies may request access to a shared gang database. When the Legislature amended AB 90 during the drafting process, it specifically removed subdivision (g) from Penal Code section 186.36 which would have explicitly forbid access to any federal agency, multistate agency, or agency of another state to access a shared gang database. (Sen. Amend to Assem. Bill 90 (2017-2018 Reg. Sess.) Sept. 8, 2017.) Following the removal of this subdivision, no language was incorporated that would otherwise suggest that it was still the intent of the Legislature for the Department to forbid access to the aforementioned parties.</p>
<p>770.8, Proxy Query to the Information Contained in a Shared Gang Database</p>	<p>20.15, 21.15</p>	<p>The proposed regulations do not comport with the privacy concerns of Assembly Bill 90. These regulations do not require “(1) the User to submit the request form to the Department prior to performing the proxy query and disseminating the information, or (2) the User to obtain any type of approval before performing the proxy query and disseminating the information. The proposed regulations seem to posit the User with the duty of deciding whether the Non-User has demonstrated a right to now and need to know.”</p>	<p>No change has been made in response to this comment as these regulations strike a balance between effective oversight of shared gang databases to prevent its misuse and cumbersome procedures that may hinder the ability of law enforcement to resolve cases by sharing information. These regulations set forth definitions for “right to know” and “need to know” and, among other things, require Users to be trained on the consequences of system misuse and the impact of releasing data for unauthorized purposes; therefore, the Department</p>

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			believes that a User should be able to determine whether the Non-User has a right to know and need to know before conducting a proxy query.
	20.16, 21.16	“Because the proposed regulations authorize Users to conduct proxy searches for, and disseminate information to, Non-Users who work for out-of-state agencies, they exceed the scope of Assembly Bill 90.”	No change has been made in response to this comment because under subdivision (a)(3) of Penal Code section 186.34, out-of-state and federal agencies are included in the definition of “law enforcement agencies;” therefore, it is the Department’s interpretation that out-of-state agencies and federal agencies may request access to a shared gang database. When the Legislature amended AB 90 during the drafting process, it specifically removed subdivision (g) from Penal Code section 186.36 which would have explicitly forbid access to any federal agency, multistate agency, or agency of another state to access a shared gang database. (Sen. Amend to Assem. Bill 90 (2017-2018 Reg. Sess.) Sept. 8, 2017.) Following the removal of this subdivision, no language was incorporated that would otherwise suggest that it was still the intent of the Legislature for the Department to forbid access to the aforementioned parties.
	32.6, 67.6, 71.28, 74.3	Eliminate the ability of individuals and/or agencies to conduct proxy queries” that give individuals and agencies access to CalGang.	No change has been made in response to this comment as the Department recognizes the need for law enforcement agencies to share information with each other within the scope of these regulations. Under subdivision (a) of section 770.8, in

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			order to conduct a proxy query, the Non-User must demonstrate that they have a need to know and a right to know.
771, User Training	20.17, 20.18, 21.17, 21.18	Users should be trained on the impact of data collection on community members to meet the standard established by Assembly Bill 90.	The Department accepts this comment and has incorporated subdivision (b)(11) into section 771.
771(a), User Training	30.13, 73.6	“It is vital to have civilian gang experts involved in the planning and presentation of the training curriculum.”	No change has been made in response to this comment because many elements of the training require the instructor to have User experience with the shared gang database and these regulations permit instructors to use material from civilian gang experts in the training.
771.6, Criteria to be Designated as a Gang Member or a Gang Associate	2.1	The criteria for entry should be narrowed.	The Department accepts this comment in part and has made significant changes to the criteria section, 771.8 in an effort to clarify the intent of each criterion and to more accurately represent criminal street gang participation. However, the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a

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			<p>gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	<p>20.19, 21.19, 22.01, 27.01, 34.2, 46.02, 63.2, 71.04</p>	<p>The criteria are overbroad and are not based on empirical research.</p>	<p>Regarding the comment concerning the criteria being overbroad, the Department accepts this comment and has made significant changes to the criteria section, 771.8 in an effort to clarify the intent of each criterion and to more accurately represent criminal street gang participation.. Regarding the comment concerning the criteria not being based on empirical research, no change has been made in response to this comment because the criteria are</p>



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

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	20.19, 21.19, 71.04	These criteria do not effectuate the purpose of Assembly Bill 90, do not conform to the requirements of California Penal Code Section 186.36, and were not drafted in conjunction with the advice of the Gang Database Technical Advisory Committee (GDTAC).	Regarding the comment concerning Penal Code section 186.36 and AB 90, the Department has engaged with the public through multiple public comment periods and, in turn, made significant changes to these regulations to ensure the satisfaction of the requirements set forth in Penal Code section 186.36 and effectuate the purpose of AB 90. Regarding the comment concerning the advice of the GDTAC, the Department met with the GDTAC on March 26, 2018, June 18, 2018, September 19, 2018, October 26, 2018, and December 13, 2018. The Department took into consideration the advice of the GDTAC in drafting these regulations.
	22.02, 22.03	These criteria are not equally valid indicators of gang membership. Adopt a summative point-based system that assigns weighted points to the criteria that must meet or exceed a threshold to designate someone as a gang member.	The Department has considered the California Department of Corrections and Rehabilitation (15 CCR § 3378.2(b)) as a potential model for assigning inclusion criteria weights or point values. While some of the inclusion criteria are similar to the criteria in section 771.8, it is unclear whether a point-based system used for identifying gang membership among incarcerated people would be useful for identifying gang membership or association among non-incarcerated individuals without sufficient empirical support. As such, the Department will continue to study the CalGang data to (1) more thoroughly examine each criteria's predictive value, (2) generate data-driven criteria weighting schemes,

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			and (3) test models of those weighting schemes.
	26.01, 30.05, 62.3	The criteria are overbroad.	The Department accepts this comment and has made significant changes to the criteria section, 771.8 in an effort to clarify the intent of each criterion and to more accurately represent criminal street gang participation.
	26.08	“[I]t is unfair and counter to public policy to allow information gathered during a jail classification interview to meet the criteria for designation as a gang member.”	The Department accepts this comment in part and has added subdivision (a)(3)(A) to section 771.8 to exclude an individual’s jail classification from being used to satisfy the reliable source criterion. However, the Department maintains that while subdivision (r)(l) of Penal Code section 186.36 excludes jail classification as a criterion, without additional language, it does not appear the Legislature intended to exclude gang membership admissions even if made during an in custody classification interview. In other words, a competent and voluntary gang membership admission should be a valid criterion regardless of where made.
	26.15	“[A] paragraph (d) should be added to state, ‘The existence of a criteria shall not be determined as a result of information learned or observed by law enforcement during a jail classification interview.’”	No change has been made in response to this comment as the Department maintains that while subdivision (r)(l) of Penal Code section 186.36 excludes jail classification as a criterion, without additional language, it does not appear the Legislature intended to exclude gang membership

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			<p>admissions even if made during an in custody classification interview. In other words, a competent and voluntary gang membership admission should be a valid criterion regardless of where made.</p>
	31.1	<p>These regulations offer few substantive improvements over the problematic criteria and the Legislature did not intend for the Department to codify the existing designation criteria.</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members.</p>

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			<p>The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	30.08	<p>“[H]and signs or tattoos may be indistinguishable from those preferred by gang members...” There is nothing in the regulations that assures that the determinations of officers will be made carefully and objectively in light of appropriate contextual factors.</p>	<p>The Department accepts this comment and has added a documentation requirement for law enforcement officers to document the basis for believing that hand signs or tattoos are tied to a criminal street gang in subdivisions (a)(5) and (a)(8) of section 771.8. Additionally, the law enforcement officers are required to have reasonable suspicion as set forth in subdivision (b) of the new section 771.6.</p>
	37.1	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“No human being, youth ages 25 and younger or alleged organization should be designated into the CalGang database or any criminal or gang database as a Gang Member, Gang Associate or alleged Criminal Street Gang as the criteria currently exists...”</p>	<p>Regarding the comment concerning the minimum age of entry, no change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR. Regarding the comment concerning the criteria, the Department has made significant changes to the criteria section, 771.8, in an effort to clarify the intent of each criterion and to more accurately represent criminal street gang participation. Additionally, the Department has added subdivision (b) to the new section 771.6 to</p>

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			specify the reasonable suspicion requirement for designation.
	37.1, 73.2	The criteria are subjective and not unique to gang participation.	<p>The Department has made significant changes to the criteria section, 771.8, in an effort to clarify the intent of each criterion and to more accurately represent criminal street gang participation. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with</p>

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			<p>whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	46.01	<p>“Sections 752.4 and 771.6 of these proposed regulations should expressly state that these criteria satisfy reasonable suspicion of gang membership, association, or affiliation but may or may not be sufficient evidence to prove active gang membership, associate status, or affiliate status in court petitions under Penal Code section 186.35.”</p>	<p>No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35.</p>
	46.02	<p>“Remove criteria for entry which have repeatedly led to the inclusion of erroneous records in the database...”</p>	<p>The Department has made significant changes to the criteria section, 771.8, in an effort to clarify the intent of each criterion and to more accurately represent criminal street gang participation. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also</p>

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			<p>considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	56.1	<p>The way these regulations are proposed, I could be eligible to be in the database for picking up someone from school and taking them home.</p>	<p>The Department has made significant changes to the criteria section, 771.8. Additionally, the Department has added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation.</p>
	58.2	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p>	<p>The Department has made significant changes to the criteria section, 771.8. Additionally, the Department has added subdivision (b) to the new section 771.6 to specify the</p>



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		The criteria could sweep many people into CalGang.	reasonable suspicion requirement for designation.
	59.2	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“The new CalGang database regulations rely on evidence as inadequate as one’s location, friendships, or living choices as communicators of one’s gang affiliation.... Once you have been entered into the system, you become a danger to anyone with whom you are seen in public.”</p>	The Department has made significant changes to the criteria section, 771.8. Additionally, the Department has added subdivision (b) to the new section 771.6 and subdivisions (a)(4)(A) and (a)(4)(B) to section 771.8 to specify the reasonable suspicion requirement for designation.
	61.2	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>The criteria to be included in CalGang are largely problematic for children because they cannot control where they live or spend their time, who they associate with, and the clothing they wear.</p>	The Department has made significant changes to the criteria section, 771.8. Additionally, the Department has added subdivision (b) to the new section 771.6 and subdivisions (a)(4)(A) and (a)(4)(B) to section 771.8 to specify the reasonable suspicion requirement for designation.
	62.2	The criteria subject people to further invasive suspicion and scrutiny by armed government agents by virtue of things they do not choose or things that they do choose that do not deserve that scrutiny.	The Department has added subdivision (d) to section 770 to limit the use of shared gang databases. The Department has also added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation.

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	74.1	<p>“[R]emove the criteria that would designate an individual as an alleged gang member that is overly broad. The criteria proposed in the regulations encourage racial profiling and bias and fail to recognize the full picture of people’s lives.”</p>	<p>The Department has made significant changes to the criteria section, 771.8 in an effort to clarify the intent of each criterion and to more accurately represent criminal street gang participation. The Department has also added subdivision (d) to section 770 to limit the use of shared gang databases, and subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation. Furthermore, the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law</p>

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			<p>enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
<p>771.6(a)(1),  Criteria to be Designated as a Gang Member or a Gang Associate,  “The person has admitted...”</p>	<p>1.2</p>	<p>“The phrase ‘under circumstances that do not undercut truthfulness’ is vague and provides no guidance to its meaning.”</p>	<p>The Departments accepts this comment in part and has incorporated a requirement to notate whether the person was arrested during the contact for violating subdivision (f) of Penal Code section 647 or subdivision (a) of Health and Safety Code section 11550 and a requirement to document the wording of the admission. These added documentation requirements will allow for a more thorough supervisory review process and provide more information during audits. Additionally, subdivisions (a)(1)(A), (a)(1)(B), and (a)(1)(C) have been added to section 771.8 to further clarify when this criterion shall not be satisfied. However, there is no reasonable way to catalog all circumstances that may undercut the truthfulness of an admission. Alternatively, eliminating this phrase entirely would result in more admissions satisfying this criterion because admissions that should be doubted would still be included.</p>

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	1.2, 35.2, 57.2	The phrase “under circumstances that do not undercut truthfulness” is unnecessary and unduly burdensome.	No change has been made in response to this comment because the Department believes that an admission can be influenced by many factors; therefore, it is necessary to evaluate the circumstances of the admission to ensure its reliability. See the ISOR for specific examples.
	20.20, 21.20, 71.05	The section introduces an unacceptable level of ambiguity because there is no common understanding of what qualifies as an admission.	No change has been made in response to this comment because an admission can vary and needs to be open to the judgement and reasonable suspicion of the trained law enforcement officer receiving the admission.
	20.21, 21.21, 65.11, 71.06	There should be a requirement that the admission be recorded and the statements made leading to the admission.	No change has been made in response to this comment as the Department has taken into consideration the lack of availability of body-worn cameras or other recording devices to law enforcement agencies; however, the Department has added a requirement for the wording of the admission to be documented and added subdivisions (e)(1) and (e)(2) to section 771.8 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited.
	20.21, 21.21, 71.06	“[T]he particular statement, recording, and circumstances must be maintained as part of the source document and their absence should invalidate the source document.”	No change has been made in response to this comment as the Department has taken into consideration the lack of availability of body-worn cameras or other

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			<p>recording devices to law enforcement agencies; however, the Department has added a requirement for the wording of the admission to be documented and added subdivisions (e)(1) and (e)(2) to section 771.8 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited.</p>
	20.22, 21.22	<p>This section will not lead to the operation and implementation of a shared gang database that is fundamentally fair because there are circumstances in which an individual will say something because she or he wants to please the listener.</p>	<p>No change has been made in response to this comment because these regulations currently require that an admission be made “under circumstances that do not undercut truthfulness.” However, subdivisions (a)(1)(A), (a)(1)(B), and (a)(1)(C) have been added to section 771.8 to further clarify when this criterion shall not be satisfied.</p>
	20.23, 21.23	<p>This proposed criterion is not reliable and will result in the inclusion of individuals who are not gang affiliates which will not serve to aid in criminal investigation and crime prevention.</p>	<p>The Department has modified this criterion by adding additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not</p>

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			<p>conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	26.02	<p>“Only admission of current gang membership should be used as a criterion.... Saying where a person is from should not be used to satisfy the admission criterion, instead law enforcement officers should ask questions that clearly indicate whether a person is a member or</p>	<p>The Department accepts this comment and has incorporated “active” into this subdivision and has added subdivision (a)(1)(B) to section 771.8.</p>

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		active participant of a gang, not merely from a neighborhood where a gang is present.”	
	26.09	Criterion (a)(1) should state, “[t]he person has admitted to being a currently active Gang Member and not merely to being from a neighborhood with an active gang, under circumstances that do not undercut truthfulness.”	The Department accepts this comment and has implemented this recommendation by incorporating “active” into this subdivision and adding subdivision (a)(1)(B) to section 771.8.
	33.3	“This section is an overreach as stated. The person admitting he/she is a gang member is doing so at their own free will.”	No change has been made in response to this comment because the Department believes that an admission can be influenced by many factors; therefore, it is necessary to evaluate the circumstances of the admission to ensure its reliability. See the ISOR for specific examples.
771.6(a)(2), Criteria to be designated as a Gang Member or a Gang Associate, “The person has been arrested...”	2.3, 20.24, 20.25, 21.24, 21.25, 26.10, 27.05, 46.04, 71.07	A conviction should be required in this criterion.	No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.
	20.26, 21.26	“Because the likelihood that an individual will be wrongfully included in a shared gang database under this criterion, inclusions pursuant to this section are not useful	The Department has modified this criterion by adding additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns

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



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			the regulation are strong indicators of gang membership.
	26.03, 39.1	An arrest without a conviction should not be a criterion for entry.	No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.
	26.10, 46.04	This criterion should state, “the person has been convicted for an offense consistent with gang activity.”	No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.
	27.05	“[I]f this criterion continues to refer to arrests rather than convictions, we recommend that the definition of ‘offense consistent with gang activity’ be limited to those offenses that are listed in subdivision (a) of the Penal Code section 186.22; Penal Code section 186.26 or 186.28, or where there is clear evidence that the	No change has been made in response to this comment as the Department has determined that this definition is consistent with the scope of the Department’s authority in subdivision (1)(2) of Penal Code section 186.36 and aligns with the definition of criminal street gang in subdivision (a)(1) of Penal Code

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		individual committed the crime not merely with other gang members, but in furtherance of the gang.”	section 186.34; however, the Department has added language to this definition to require a nexus between the offense(s) committed and gang activity.
	65.12	Arrests are not always substantiated by evidence and there are times when charges are not pursued.	No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.
771.6(a)(3), Criteria to be designated as a Gang Member or a Gang Associate, “The person has been identified... by a reliable source.”	20.27, 20.28, 20.29, 21.27, 21.28, 21.29, 71.08	The criterion will not increase the accuracy of shared gang databases and is unfair. There is no guarantee that an informant’s opinion is substantiated by facts and unbiased. Additionally, a false statement is not helpful for criminal investigations and crime prevention.	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. Furthermore, the Department has added subdivisions (a)(3)(A) and (a)(3)(B) to section 771.8 to place limitations on what a reliable source may be based on and who a reliable source may be.
	26.04	“Identification by a reliable source should not be a criterion in itself. Rather, the reliable source should	The Department accepts this comment in part and has added language to require that “the identification shall be based solely on

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		have to point to other criteria as a basis for their identification.”	information that would support criteria set forth herein.”
	26.11	“Criterion (a) (3) should state, ‘The person has been identified as a Gang Member by a reliable source who has personal knowledge that at least one other criterion listed herein is met. A law officer shall document which criterion or criteria are met.’”	The Department accepts this comment and has incorporated this recommendation by adding language to require that “the identification shall be based solely on information that would support criteria set forth herein” and documentation requirements for the law enforcement officer.
	27.06	This “criterion does not define what makes a source ‘reliable’ nor what factual evidence a source could consider to render judgment on whether a person is a gang member.... [T]his criterion would allow subjective opinions to substitute for evidence...”	Regarding the first part of the comment concerning the definition of reliable, no change has been made in response to this comment because “reliable source” is defined in subdivision (r) of section 770.2. Regarding the second part of the comment concerning the evidence a reliable source may consider and subjective opinions, the Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. Furthermore, the Department has added subdivisions (a)(3)(A) and (a)(3)(B) to section 771.8 to place limitations on what a reliable source may be based on and who a reliable source may be.
	27.08, 31.3, 39.2	This criterion should be removed.	No change has been made in response to this comment because the

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

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	27.08	<p>“To the extent an individual can be added to a gang database based on observations made outside of the presence of the law enforcement officials ultimately responsible for their inclusion in the gang database, ‘reliable sources’ should only be a permissible form of source data, confirming the presence of one or more listed criteria that should go in a separate source document provision.”</p>	<p>The Department accepts this comment in part and has included a new modified version of this criterion which requires a reliable source’s opinion to be based on reasons consistent with the criteria set forth in section 771.8. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged</p>

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			<p>shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
<p>771.6(a)(4),  Criteria to be designated as a Gang Member or a Gang Associate,  “The person has been seen associating...”</p>	<p>2.2, 3.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1, 13.1, 14.1, 15.1, 16.1, 17.1, 18.1, 19.1, 23.1, 24.1, 25.1, 27.09, 29.2, 31.3, 32.1, 39.3, 40.1, 41.1, 42.1, 43.1, 44.1, 45.1, 46.03, 47.1, 64.3, 67.1, 71.22, 74.1</p>	<p>This criterion should be removed.</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to</p>

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			accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.
	20.30, 20.31, 21.30, 21.31, 71.09	This criterion introduces a level of ambiguity and subjectivity that undermines any claim of reliability.	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
	20.32, 21.32	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“This criterion is so attenuated to actual gang affiliation that it will not improve the CalGang or other shared gang databases for use during crime investigation and crime prevention.”</p>	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study.

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			<p>The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	26.05	<p>Associating with gang members should not be used as evidence of gang membership, only associations such as participating in gang meetings or being present during an initiation.</p>	<p>The Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However; the criteria are consistent with the</p>



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

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	26.12	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“Criterion (a) (4) should state, ‘The person has been seen engaged in gang activity with persons meeting the criteria for entry or who have previously been entered as a Gang Member into the CalGang database. To meet this criterion, a gang activity need not be an offense consistent with gang activity. The law enforcement officer shall document the gang activity.’”</p>	<p>The Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with</p>

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

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			<p>enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	27.09	<p><i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i></p> <p>“If the Department wishes to include association as a criterion, we recommend defining this criterion to apply only if a ‘person has been convicted in the commission of gang-related crime with persons meeting the criteria for entry or who have previously been entered as a Gang Member into the CalGang database.’”</p>	<p>No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.</p>
	64.2	<p>This criterion is problematic. This means that all the students that I teach at my high school could be added in the database because they know me.</p>	<p>The Department has added subdivision (b) to the new section 771.6 and subdivisions (a)(4)(A) and (a)(4)(B) to section 771.8 to specify the reasonable suspicion requirement for designation.</p>
	65.14	<p>This criterion embraces innocuous conduct.</p>	<p>The Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to</p>

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			address concerns raised by public comments opposed to the inclusion of this criterion. Additionally, the Department has added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation.
771.6(a)(5), Criteria to be designated as a Gang Member or a Gang Associate, “The person has been seen displaying one or more symbols and/or hand signs...”	20.33, 21.33	“In order for this criterion to reliably include individuals in a shared gang database, it needs to expressly exclude photographs as a source of the observation. The regulation should also require law enforcement officers to detail the context of symbol or hand sign that is displayed.”	Regarding the comment concerning photographs, no change has been made in response to this comment as the Department believes photographs and images lawfully obtained can be a valuable resource for establishing gang membership and association in an intelligence database. Regarding the comment concerning documentation of a symbol or hand sign, the Department accepts this comment and has added language to this criterion to require the law enforcement officer to document the basis for believing that the symbol and/or hand sign is tied to an active criminal street gang.
	20.34, 20.35, 21.34, 21.35	It is not fair to include someone in the CalGang or other shared criminal database if the inclusion is based on an old photograph that was recently circulated on social media by an old friend and that this criterion will not improve gang databases without this requirement.	The Department accepts this comment and has added subdivision (c) to section 771.8.
771.6(a)(6), Criteria to be designated as a Gang Member or a Gang Associate,	2.2, 3.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1, 13.1,	This criterion should be removed.	No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is

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<p>“The person has been seen at one or more gang-related addresses or locations.”</p>	<p>14.1, 15.1, 16.1, 17.1, 18.1, 19.1, 23.1, 24.1, 25.1, 26.06, 26.13, 27.10, 27.12, 29.2, 31.3, 32.1, 39.4, 40.1, 41.1, 42.1, 43.1, 44.1, 45.1, 46.03, 47.1, 64.3, 67.1, 71.22, 74.1</p>		<p>referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>

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	20.36, 20.37, 20.38, 21.36, 21.37, 21.38, 71.10	This criterion does not accurately indicate gang affiliation, is unreliable and unfair.	<p>The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. For example, entire neighborhoods and schools may not satisfy this criterion. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law</p>

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			enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.
	20.44, 21.44, 27.11, 30.07, 64.1	People may be present at locations associated with gangs for reasons other than gang activity.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. For example, entire neighborhoods and schools may not satisfy this criterion.
	65.15	“Entire [neighborhoods] and parks are designated as a gang location.”	The Department accepts this comment and has removed the reference to “locations.” Additionally, the Department has added subdivision (a)(6)(B) to section 771.8, providing that entire neighborhoods and schools may not satisfy this criterion.
	69.3	This criterion should be more detailed.	The Department accepts this comment and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public



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			<p>comments opposed to the inclusion of this criterion. For example, entire neighborhoods and schools may not satisfy this criterion.</p>
<p>771.6(a)(7),  Criteria to be designated as a Gang Member or a Gang Associate,  “The person has been seen wearing a style of dress or accessory...”</p>	<p>20.39, 20.40, 20.41, 21.39, 21.40, 21.41, 65.16, 71.11</p>	<p>An individual’s style of dress does not reliably indicate gang affiliation and this criterion is too subjective.</p>	<p>The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated</p>

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			<p>counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	20.40, 21.40, 65.16	This criterion has potential to act as a proxy for racial bias which is unfair.	<p>The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. Additionally, the Department has added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that</p>

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			<p>the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	26.07	<p>“Style of dress is no more indicative of gang membership than is hair style or favorite music and should not be used.”</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not</p>

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			<p>conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers' ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	<p>3.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1, 13.1, 14.1, 15.1, 16.1, 17.1, 18.1, 19.1, 23.1,</p>	<p>This criterion should be removed.</p>	<p>No change has been made in response to this comment because the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the</p>

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	24.1, 25.1, 26.14, 27.13, 29.2, 31.3, 32.1, 39.5, 40.1, 41.1, 42.1, 43.1, 44.1, 45.1, 46.03, 47.1, 67.1, 71.22, 74.1		<p>studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	27.13	“[W]e recommend that [this] be amended to eliminate reference to a ‘style of dress’ and require a specific worn item of clothing or accessory –	Regarding the comment concerning the style of dress, the Department accepts this comment and has removed “style of dress” from this subdivision. Regarding the comment

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		<p>not simply a color – that is tied to a specific criminal street gang.”</p>	<p>concerning a specific item of clothing, no change has been made in response to this comment as gangs are frequently evolving and adapting; therefore, if the Department were to point to a specific item of clothing in these regulations, that item of clothing may be irrelevant in a matter of years. The Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. However; the criteria are consistent with the Department's empirical research in the rulemaking file. Each criterion is referenced to some degree as being related to gangs and gang membership in one or more of the studies, even if not the primary subject of any one particular study. In addition, the criteria do not conflict with or contradict any study. The Department is not aware of any empirical research determining that the criteria in the regulation lacks any probative value for identifying a gang member. The Department also considered the experience of law enforcement officers who are experts in criminal gang activity. Studies included in the rulemaking file indicate that the majority of individuals identified as gang members by law enforcement officers ultimately self-admit to gang membership, and are significantly</p>

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			<p>more criminally active compared to delinquent but non-gang-affiliated counterparts. The criteria established by the Department are consistent with these studies, which support law enforcement officers’ ability to accurately identify gang members. The law enforcement officials with whom the Department engaged shared their observations about gang membership indicators and advised the Department that, based on their extensive knowledge of and history with gang members, the criteria in the regulation are strong indicators of gang membership.</p>
	30.06	<p><i>This comment references the CalGang database but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“[T]here is nothing in the regulations that prevent people who wear styles of dress or colors favored by gang participants from being documented in CalGang.”</p>	<p>The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.</p>
	60.1	<p>“Identifying markers like these are highly open to interpretation and abuse. Broad discretion on the part of law enforcement undoubtedly leads to inconsistency and inaccuracy.”</p>	<p>The Department has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion. Additionally, the supervisory review process required by section 772.2 should prevent inconsistencies and inaccuracies.</p>

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	69.2	This criterion has to be paired with other criteria in order for someone to be entered into the database.	No change is needed in response to this comment because the satisfaction of this criterion would not be the sole reason for a person to be designated as a Gang Member or Associate. A person may be designated as a Gang Member or Associate after satisfaction of the requirements set forth in section 771.6.
	72.2	Individuals may dress in clothing that is affordable for them or because they like it. "I don't think the state of California wants to place the economic burden on families. However, with the style of dress regulations, that's the exact message that we're sending."	The Department accepts this comment in part and has included a new modified version of this criterion with additional requirements, in an effort to ensure the accuracy and reliability of this criterion and to address concerns raised by public comments opposed to the inclusion of this criterion.
771.8(a), Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database	1.3	"Limiting the notice of inclusion to those 13 and older may already be too late."	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	20.42, 21.42, 65.17, 71.12	The proposed regulations are not consistent with empirical research and therefore are not in accordance with Penal Code section 186.36(l).	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	20.43, 20.44, 21.43, 21.44, 28.1, 28.3,	The minimum age for entry should be raised to the 18 years of age.	No change has been made in response to this comment as the minimum age to be designated in the



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	29.1, 32.3, 61.1, 67.3, 71.13, 71.25		database is based on existing empirical research of youth gang participation as described in the ISOR.
	33.4, 66.5	Some gang members are as young as 10, but the crimes they commit are a detrimental and a clear and present danger to the public. Law enforcement has a duty to document all gang members who meet the criteria.	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	35.3, 57.3	<i>This comment references the CalGang database but has been included as the Department believes the comment could apply to the Shared Gang Databases regulations.</i>  “The minimum age for entry into the CalGang database should be 11 years of age instead of 13.”	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
	36.2, 70.2	We are okay with keeping the minimum age at 13.	No change is needed in response to this comment.
	69.1	The minimum age for entry should be lower because there are many gang members who are younger and committing crimes on behalf of the adults.	No change has been made in response to this comment as the minimum age to be designated in the database is based on existing empirical research of youth gang participation as described in the ISOR.
771.8(b) and 771.8(c), Minimum Age of Entry and Requirements to Enter a Person into	20.43, 21.43, 71.13	“The regulations should contain the following rules: (1) for each contact, the source documents shall capture all applicable criteria that a person has met irrespective of the criterion pattern, and applicable criteria shall	Regarding the first recommendation, no change has been made as this is already common practice by law enforcement and there is nothing in these regulations that would prevent law enforcement from capturing and

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a Shared Gang Database		also be entered into the database; and (2) a law enforcement officer must document, and record if a recording device is readily available, all indicia of non-gang involvement by an individual who the law enforcement officer suspects, or has previously suspected, to be a gang affiliate.”	documenting all applicable criteria and maintaining those source documents. Regarding the second recommendation, no change has been made in response to this comment as the Department has taken into consideration the lack of availability of body-worn cameras or other recording devices to law enforcement agencies; however, the Department added subdivisions (e)(1) and (e)(2) to section 771.8 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited.
	20.45, 21.45	None of the law enforcement members on the GDTAC could explain why there was a need for two categories, therefore this section is not demonstrated to be useful for investigating or preventing crime in California.	The Department accepts this comment in part and has combined Gang Member and Gang Associate into one category, Gang Member or Associate. However, the Department has added subdivision (c)(3) to section 771.6 for law enforcement to be able to utilize an optional feature in a shared gang database to indicate whether the law enforcement officer suspects that the designated person is a non-member gang associate.
	27.16	Membership does not demonstrate reasonable suspicion of criminal conduct which is inconsistent with subdivision (a) of the Code of Federal Regulations, Title 28, section 23.20 and case law.	The Department accepts this comment and has added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation.
	27.17	<i>This comment references the CalGang Database regulations but</i>	Regarding the comment concerning reasonable suspicion, the Department

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		<p><i>has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“[T]he proposed regulations must clearly require that, in addition to satisfying at least two specified criteria, there must be reasonable suspicion that the person is involved in criminal activity, and specifically reasonable suspicion the person is an active gang participant. We further suggest that the Department of Justice remove the category of ‘gang associate’ from Section 752.6(c) because it is insufficient to include an individual in this database as an associate where law enforcement lacks reasonable suspicion that an individual is directly engaged in the illegal conduct of the criminal street gang, regardless of whether sufficient criteria may be satisfied.”</p>	<p>accepts this comment and has added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation. Regarding the comment concerning the gang associate category, the Department accepts this comment in part and has combined Gang Member and Gang Associate into one category, Gang Member or Associate. However, the Department has added subdivision (c)(3) to section 771.6 for law enforcement to be able to utilize an optional feature in the CalGang database to indicate whether the law enforcement officer suspects that the designated person is a non-member gang associate.</p>
	30.09, 31.4, 39.6, 46.02	The number of criteria for entry should be increased.	The Department accepts this comment in part and has added subdivision (c)(1) to section 771.6 to require a third unique criterion to be used for entry into the database when subdivision (a)(6) and (a)(7) of section 771.8 are used together. The Department is committed to making data-driven regulatory decisions based on empirical research conducted by the Department, scholars, experts, or other sources of reputable, sound research.
	30.11	<i>This comment references the CalGang Database regulations but</i>	The Department accepts this comment. A trained law enforcement

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		<p><i>has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“‘[A] trained law enforcement officer’s reasonable suspicion,’ is vague. Is this someone trained to use CalGang pursuant to section 751.8 or is it any officer with some gang-specific training?... [I]t is essential that any officer who is assessing conduct that is not unique to gangs be adequately trained to differentiate between gang and non-gang behavior.”</p>	<p>officer is a law enforcement officer who has received the training set forth in section 771 of these regulations.</p>
	46.05	<p>Require that three or more criteria be met before a record can be created.</p>	<p>The Department accepts this comment in part and has added subdivision (c)(1) to section 771.6 to require a third unique criterion to be used for entry into the database when subdivision (a)(6) and (a)(7) of section 771.8 are used together. The Department is committed to making data-driven regulatory decisions based on empirical research conducted by the Department, scholars, experts, or other sources of reputable, sound research.</p>
	71.24	<p>“[R]aise the standard of justice of the California justice system by switching to a standard away from reasonable suspicion to probable cause. This would ensure a level of accuracy and legitimacy of the justice system that is required to really protect Californians.”</p>	<p>No change has been in response to this comment as the Department supports the necessity for an intelligence database to address gang-related crime. To ensure the protection of constitutional rights and an individual’s privacy, shared gang databases shall be compliant with Code of Federal Regulations, Title 28, Part 23.</p>

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771.8(c), Minimum Age of Entry and Requirements to Enter a Person into a Shared Gang Database	60.2	“[T]he gang associate criteria allows people to be included who have nothing to do with gang activity.”	The Department accepts this comment in part and has combined Gang Member and Gang Associate into one category, Gang Member or Associate. Additionally, the Department has made significant changes to the criteria section, 771.8.
772, Other Rules Pertaining to the Entry of a Person in a Shared Gang Database	1.4, 57.4	The limitation on the use of gang tattoos is inappropriate and impractical.	No change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8.
	1.4	How are the Users supposed to know that a tattoo criterion has already been used once? Valuable contact intelligence will be lost after a contact is rejected by the database.	Regarding the comment concerning Users knowing if a tattoo criterion has already been used, no change has been made in response to this comment because a User will know that a tattoo criterion has already been satisfied when they review a record or attempt to add a new tattoo into the CalGang database. Regarding the comment concerning the loss of intelligence, no change has been made in response to this comment as tattoo can still be documented as intelligence

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			information and maintained in a hard copy intelligence file with the documenting agency, but cannot be entered into a shared gang database more than once unless as provided by subdivision (a)(8)(C) of section 771.8.
	20.46, 20.47, 21.46, 21.47, 65.18	The public display of a tattoo is not an accurate indicator of current gang affiliation and an individual should not be punished for wearing shorts, short-sleeves, or a bathing suit because a tattoo is permanent. A single tattoo should not be used multiple times to satisfy a criterion.	No change has been made in response to this comment because the Department has considered the need to balance law enforcement's need for intelligence to solve crimes with protecting civil rights. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8.
	30.12	This section is vague, overbroad, subjective, and unacceptable.	No change has been made in response to this comment because the Department has considered the need to balance law enforcement's need for intelligence to solve crimes with protecting civil rights. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo, mark, scar, or branding multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion. Furthermore, these regulations

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			<p>require supervisory reviews, audits, and attestations, which the Department believes will reduce and/or prevent any instances of data inaccuracy. The Department is dedicated to monitoring CalGang entries and submitting future regulation packages to address overinclusion in the CalGang database. The Department will then carry any findings from the research on the CalGang database, to these regulations governing shared gang databases, as applicable.</p>
	33.5, 33.6, 66.3	<p>This section restricts law enforcement’s ability to document and track gang activity. Gangs do not discriminate if a tattoo is old or new, therefore, law enforcement should be able to document these visible gang tattoos without restriction.</p>	<p>No change has been made in response to this comment because the Department believes it may not always be feasible for a person to remove all tattoos, marks, scars, or brandings; additionally, the Department does not believe that it would be appropriate to require a person to do so. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8.</p>
	35.4, 70.4	<p>“The overly complicated and special requirements for use of gang tattoos as a criterion is unwarranted.”</p>	<p>Regarding the comment concerning the limitation on the use of gang tattoos, no change has been made because the Department has</p>

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			<p>considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8. Additionally, the Department believes the requirements set forth in this section are necessary for the reasons stated in the ISOR.</p>
	62.5	<p>The ability to document a tattoo multiple times if it is used as a “means of intimidation” is problematic because what is intimidating to an officer is highly subjective and can often be exaggerated.</p>	<p>No change has been made in response to this comment because the Department has considered the need to balance law enforcement’s need for intelligence to solve crimes with protecting civil rights. Subdivision (a)(8) of section 771.8 limits the ability of law enforcement to use a single tattoo multiple times as more than one indicator of gang membership or association and prevents duplication and/or overuse of a single criterion; however, a single tattoo may still be used on subsequent occasions if it meets the elements set forth in subdivision (a)(8)(C) of section 771.8. Furthermore, these regulations require supervisory reviews, audits, and attestations, which the Department believes will reduce</p>



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			and/or prevent any instances of data inaccuracy. The Department is dedicated to monitoring CalGang database entries and submitting future regulation packages to address overinclusion in the CalGang database. The Department will then carry any findings from the research on the CalGang database, to these regulations governing shared gang databases, as applicable.
772.2, Criteria for an Organization to be Designated as a “Criminal Street Gang”	20.48, 21.48	“[T]he User Agency or Node Administrator should first have to note the racial makeup of the organization before a User Agency or Node Administrator can designate an organization as a criminal street gang... so that such a record can be subject to scrutiny and review. This review may help guard against racial profiling.”	No change has been made in response to this comment because it may be inaccurate for a User to draw conclusions about the racial makeup of an organization when there only needs to be three persons who meet the criteria to be designated as a Gang Member or Associate for a criminal street gang to be entered into the CalGang or any shared gang database. Three persons may not be a representative sample of the criminal street gang’s actual racial makeup.
772.4, Supervisory Review Process	20.49, 21.49	This section does not require that data be obtained legally. “The following sections should be added: 1) any intelligence data that was obtained in violation of any applicable Federal, State, or local law, policy, or ordinance, shall not be stored in any manner that suggests it is true or accurate; and (2) the identity (or identities) of the officer (or officers), who obtained the intelligence data in violation of any applicable Federal, State, or local law, policy, or ordinance, as well as	Regarding the comment concerning intelligence obtained in violation of any applicable federal, state, or local law, policy, or ordinance, the Department accepts this comment and has added incorporated language into subdivision (b) of sections 772.2 and 772.8. Regarding the comment concerning the identity or identities of officers, no change has been made in response to this comment because it is outside the scope of these regulations.

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		the nature of the violation, shall be made available to a member of the public upon request.”	
	46.08	“Mandate removal of intelligence data obtained in violation of any applicable federal, state, or local law; policy; or ordinance.	The Department accepts this comment and has incorporated language into subdivision (b) of sections 772.2 and 772.8 requiring that this information shall not be entered into a shared gang database.
772.8, Notifying a Person of Inclusion in a Shared Gang Database	20.50, 21.50	“[T]his section should require that the individual be told the gang with which she or he is thought to be affiliated. Further, CalGang or other shared gang database should record those instances where notice is not provided. Lastly, where a User Agency seeks to notify a juvenile of inclusion, the User Agency should be required to see if the juvenile is a ward of the court, and if so, the User Agency should be required to notify the juvenile's counsel as to the inclusion.”	Regarding the comment concerning the name of the criminal street gang, the Department accepts this comment and has changed notifying a person of the criminal street gang that they are connected to in the database from being optional to mandatory. The Department has added subdivision (c)(5) to the new section 773 and subdivision (a)(7) to the new section 773.4. Regarding the comment concerning a record when notice is not provided, no change has been made in response to this because subdivision (i)(1) of section 773 includes a requirement for documentation to be captured in a shared gang database in the event notice is not provided. Regarding the comment concerning determining if a juvenile is a ward of the court, no change has been made because the regulations language regarding notification is consistent with subdivision (c) of Penal Code section 186.34 which includes guardians in the notification requirement.

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	46.14, 68.3	It should be mandatory to include the name of the criminal street gang to which a person is associated in notices of inclusion and responses to information requests.	The Department accepts this comment and has changed notifying a person of the criminal street gang that they are connected to in the database from being optional to mandatory. The Department has added subdivision (c)(5) to the new section 773 and subdivision (a)(7) to the new section 773.4.
	33.7, 66.4	Two separate letters to the parent and juvenile is not necessary. Sending two separate letters is redundant.	No change has been made in response to this comment because there may be a situation in which the juvenile does not reside with the parent or guardian.
	46.09	“Expressly refer to the evidentiary limit in Penal Code section 186.35 (c) in the sections of the proposed regulations that address notice, information requests, and removal requests.”	The Department accepts this comment and has added subdivision (c)(4) to the new section 773.
	46.10	“Sections 753.6 (c) and 772.8 (c) of the proposed regulations should expressly state that any evidence not provided in the notice may be inadmissible in a court petition.”	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300. Additionally, Penal Code section 186.34 entitles an individual to written notice of his or her entry into a shared gang database and a written notice of the basis of designation. The statute does not

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			create an exception to the general rule of confidentiality for police investigative and intelligence records, or the privileges held under Evidence Code sections 1040 and 1041.
773, Information Requests and Verifying the Identity of the Requesting Party	20.51, 21.51	“An individual should be able to verify his or her identity by using a school identification card, because other forms of identification are more difficult to obtain. Further, an individual should not be obligated to provide her or his address as part of the verification procedure.”	Regarding the comment concerning school identification cards, the Department accepts this comment and has added subdivision (c)(2) to the new section 773.2. Regarding the comment concerning providing an address, no change has been made because these regulations only provide options of what an Agency may seek if the Agency chooses to develop a verification of identity form and does not require an individual to provide their address.
	46.13	“Create a procedure for engaging with attorneys by mail.”	The Department accepts this comment and has added subdivision (a)(1) to the new section 773.2.
773.2, An Agency’s Response to an Information Request	20.52, 21.52	“[A]n Agency should be required to disclose the name of the criminal street gang, as well as the (1) dates, (2) times, (3) locations, and (4) officers involved in the contact.”	Regarding the comment concerning the name of the criminal street gang, the Department accepts this comment and has added subdivision (c)(5) to the new section 773 and subdivision (a)(7) to the new section 773.4. Regarding the comment concerning including the dates and locations of the contacts, the Department accepts this comment and has added subdivision (c)(2) to section 773 and (b)(4) to section 773.4. In drafting these regulations, the Department has considered the need to balance transparency while still maintaining

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			<p>investigative integrity and safety which is why the Department included “to the extent possible” in this new language. Regarding the comment concerning including the officers involved in the contact, no change has been made in response to this comment because it is outside the scope of these regulations.</p>
	20.53, 21.53	<p>“An individual who requests removal should be entitled to an answer. When the agency does not respond to the removal request, the record should be purged.”</p>	<p>No change has been made in response to this comment because pursuant to subdivision (d)(2) of Penal Code section 186.34, the local law enforcement agency shall provide information requested “unless doing so would compromise an active criminal investigation or compromise the health or safety of the person if the person is under 18 years of age.”</p>
	27.02	<p>“[T]he regulations appear to sanction law enforcement agencies presenting information in opposition to a petition for removal that it has not previously disclosed to the petitioner.”</p>	<p>No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300. Additionally, Penal Code section 186.34 entitles an individual to written notice of his or her entry into a shared gang database and a written notice of the basis of designation. The statute does not create an exception to the general</p>

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			rule of confidentiality for police investigative and intelligence records, or the privileges held under Evidence Code sections 1040 and 1041.
	27.18	“Allowing law enforcement agencies to present evidence to a Superior Court to support an individual’s inclusion in a database that the individual is unable to review or challenge undermines [the goal of A.B. 90] and is incompatible with due process requirements.... We recommend striking the language in both provisions stating that ‘[n]othing in this subdivision restricts the release of [information] . . . under court order or for an in-camera review by a court.’”	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300. Additionally, Penal Code section 186.34 entitles an individual to written notice of his or her entry into a shared gang database and a written notice of the basis of designation. The statute does not create an exception to the general rule of confidentiality for police investigative and intelligence records, or the privileges held under Evidence Code sections 1040 and 1041.
	46.07	“Avoid unfairness in removal petitions and strengthen protections against unconstitutional searches and seizures by making the release of information about police contacts conditional on the release of all reports and recordings of that contact.”	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35.

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	46.11	“Sections 754 (a) and 773.2 (a) of the proposed regulations should expressly state that any evidence not provided in the response may be inadmissible in a court petition.”	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300. Additionally, Penal Code section 186.34 entitles an individual to written notice of his or her entry into CalGang and a written notice of the basis of designation. The statute does not create an exception to the general rule of confidentiality for police investigative and intelligence records, or the privileges held under Evidence Code sections 1040 and 1041.
	68.1	“There’s no guidance in the existing regulations for agencies on how to respond to information requests and what evidence needs to be provided when notice is given that someone’s being included in a gang database.”	No change has been made in response to this comment because section 773.4 details an Agency’s response to an information request and subdivision (c) of section 773 details the evidence that needs to be provided when notifying a person of inclusion in a shared gang database.
773.4, Agency’s Response to a Request for Removal	34.4, 63.4, 68.2	The proposed regulations undermine statute because they sanction law enforcement agencies presenting information in opposition to a petition for removal that agencies withheld from the petitioner.	No change has been made in response to this comment because it is outside the scope of these regulations. These regulations do not govern the procedures of the court petition process created by Penal Code section 186.35 nor do these

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			<p>regulations govern what a court may or may not review. Such procedures are prepared by the judicial branch and described in California Rules of Court section 3.2300. Additionally, Penal Code section 186.34 entitles an individual to written notice of his or her entry into CalGang and a written notice of the basis of designation. The statute does not create an exception to the general rule of confidentiality for police investigative and intelligence records, or the privileges held under Evidence Code sections 1040 and 1041.</p>
	46.12	<p>“Sections 754.2 and 773.4 of the proposed regulations should expressly state that a statement of the reason for a denial shall not refer to any evidence that was not previously provided to the requestor pursuant to sections 753.6, 754, 772.8, or 773.2.”</p>	<p>No change has been made in response to this comment because there may be times when evidence is not provided to the requestor, specifically when doing so would compromise an active criminal investigation or the health or safety of a juvenile that is designated in a shared gang database.</p>
	46.15	<p>“Provide guidance as to when a record should be deleted because of a removal request...”</p>	<p>The Department accepts this comment and has added subdivision (c) to the new section 773.6.</p>
	46.16	<p>“Provide guidance to agencies stating that there should be no required form for removal requests under Penal Code section 186.34 (e).”</p>	<p>No change has been made in response to this this comment because the Department has determined that it would be more efficient for agencies to develop their own process for removal petitions so long as they are in alignment with these regulations.</p>



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	46.18	“Mandate that agencies must file administrative records under seal when responding to removal petitions under Penal Code section 186.35.”	No change has been made in response to this comment because it is outside the scope of these regulations.
	46.19	“Report the results of removal petitions that are resolved by settlement.”	No change has been made in response to this comment because the Department is not mandated to publish an annual report on any shared gang database other than the CalGang database. However, the Department has accepted this comment in the CalGang regulations package.
773.6, Retention Period for Records	3.2, 4.2, 5.2, 6.2, 7.2, 8.2, 9.2, 10.2, 11.2, 12.2, 13.2, 14.2, 15.2, 16.2, 17.2, 18.2, 19.2, 23.2, 24.2, 25.2, 40.2, 41.2, 42.2, 43.2, 44.2, 45.2, 47.2, 61.3, 61.4	The five-year retention period should be limited to one year for minors and two years for adults. Two criteria should be required to reset the retention period and not one.	Regarding the comment concerning the retention period for adults and minors, the Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the Addendum to Initial Statement of Reasons (AISOR). Regarding the comment concerning the retention period for adults, the Department is maintaining the five-year period for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods. Regarding the comment concerning two criteria to reset the retention period, the Department accepts this comment and has updated subdivision (b) of the new section 773.8.

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	20.54, 21.54, 22.04, 22.05, 22.06, 26.17, 27.01, 27.14, 34.2, 34.3, 63.2, 63.3, 65.19, 71.14	The retention period is not consistent with empirical research.	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	20.55, 21.55	“An active gang member is likely to have her or his purge clock restarted repeatedly; a shorter retention period will only increase the accuracy of the database because it will eliminate those individuals who are not repeatedly contacted by law enforcement.”	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	20.57, 21.57	“Continuing to include an individual as a gang affiliate - even though the individual may no longer be affiliated with a gang - is not fair.”	The Department accepts this comment and has added subdivision (c) to the new section 773.6.
	20.56, 20.58, 21.56, 21.58, 71.15	This section is not consistent with empirical research and will not increase the accuracy of the database or criminal investigations.	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons

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			stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	22.07	“Distinguish the retention period for individuals entered into the database as juveniles from the retention period for individuals entered into the database as adults.”	The Department accepts this comment and has incorporated a new section for the retention period of juvenile records, 774.
	22.08	“Reduce the retention period for individuals entered into the database as juveniles to 2 years. Reduce the retention period for individuals entered into the database as adults to 3 years.”	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	22.09	“If strong indicators of continued gang activity are added to a person’s record, the retention period should reset to either 2 or 3 years, according to whether the person is a juvenile or adult when the additional criteria are met.”	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods. Additionally, the

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			Department has incorporated language into the new sections 773.8 and 774 specifying that if the requirements for designation are met again, the retention period will be reset.
	26.16, 26.19, 32.4, 39.7, 58.3, 67.4, 71.26, 74.2	The retention period should be shortened to two years.	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	26.18	“[T]he language for restarting the retention period is ambiguous...”	The Department accepts this comment and has incorporated language into the new sections 773.8 and 774 for added clarity surrounding the requirements for resetting the retention period.
	26.19, 31.6, 46.17	The number of criteria to restart the retention period should be the same as the criteria for entry.	The Department accepts this comment and has incorporated language into the new sections 773.8 and 774.
	27.14	“[T]he regulations should not allow for the retention period to be reset every time a single criterion is satisfied.... We recommend, at minimum that youth placed in the database while under 18-years-old remain in the database for no more	Regarding the comment concerning the resetting of the retention period, the Department accepts this comment and has incorporated language into the new sections 773.8 and 774. Regarding the comment concerning the retention period for juveniles and

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		than one year, and that the retention period for those entered as adults last no more than two years.”	adults, the Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	31.2	“[T]he proposed regulations do not improve the policy regarding how long an individual would remain in the database.”	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR and will conduct research on adult retention periods.
	31.5	“Shorten the retention period.”	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.
	32.2, 67.2, 71.23	“Require that at least two of the remaining criteria for inclusion must be established in order to reset the retention period, rather than just one.	Regarding the comment concerning the requirements to reset the retention period, the Department accepts this comment and has

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		In addition, remaining criteria used to establish a person’s redesignation should be required to meet the standard of reasonable suspicion that they are engaged in criminal activity under the direction of a gang.”	incorporated language into the new sections 773.8 and 774. Regarding the comment concerning reasonable suspicion, the Department accepts this comment and has added subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation.
	32.4, 39.9, 46.15	The records of people who successfully complete probation or parole should be removed.	The Department accepts this comment and has added subdivision (c) to the new section 773.6.
	32.4	A person who has no system contact should have their name removed.	No change has been made in response to this comment because a person who has no system contact will have their record purged from the database upon expiration of their retention period pursuant to sections 773.8 and 774. However, subdivision (c) has been added to the new section 773.6 which provides guidance for Agencies when considering a request for removal.
	34.3, 63.3	“A one-year retention period for youth under 18 and two-year period for adults better reflects empirical research.”	The Department accepts this comment in part and has shortened the retention period for juveniles based on existing empirical research as described in the AISOR. The Department is maintaining the five-year period for adults for the reasons stated in the ISOR, which is consistent with subdivision (h) of Title 28, section 23.20 of the Code of Federal Regulations, and will continue to conduct research on adult retention periods.

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	36.1, 70.1	The retention period should stay at five-years.	The Department accepts this comment in part and is maintaining the five-year period for adults for the reasons stated in the ISOR; however, the Department has shortened the retention period for juveniles based on existing empirical research as described in the AISOR and will continue to conduct research on adult retention periods.
	46.05	Require that three or more criteria be met before a retention period can reset.	No change has been made in response to this comment as the Department believes that requiring the same number of criteria to reset a retention period as that for designation as a Gang Member or Associate will increase the accuracy of shared gang databases and reduce the likelihood of overinclusion.
774.2, Source Documents	20.59, 21.59	The proposed sections do little to ensure accurate source documents and the following sections should be added: “(1) No source document will be considered a valid source document if any available body-worn camera evidence is not also preserved. No source document will be considered a valid source document if a body-worn camera recording reasonably could have been obtained, but was not obtained, by the officer; and (2) No source document will be considered a valid source document if any available audio or video recording is not also preserved. No source document will be considered a valid source document if an audio or	No change has been made in response to this comment as the Department has taken into consideration the lack of availability of body-worn cameras or other recording devices to law enforcement agencies; however, the Department added subdivisions (e)(1) and (e)(2) to section 771.8 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited.

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		video recording reasonably could have been obtained, but was not obtained, by the officer.”	
	20.60, 21.60	“In many instances, any dispute over the nature of a contact will result in the memory of a police officer versus the memory of a community member. The best possible way to protect the fairness and integrity of the system is to require recordings when reasonably possible.”	No change has been made in response to this comment as the Department has taken into consideration the lack of availability of body-worn cameras or other recording devices to law enforcement agencies; however, the Department added subdivisions (e)(1) and (e)(2) to section 771.8 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited.
	20.61, 21.61	“In order to best serve criminal investigations, the regulations should require that source documents be recorded.”	No change has been made in response to this comment as the Department has taken into consideration the lack of availability of body-worn cameras or other recording devices to law enforcement agencies; however, the Department added subdivisions (e)(1) and (e)(2) to section 771.8 to require the law enforcement officer to indicate whether a recording of their contact with a person is available so that, if a recording exists, it can be reviewed and/or audited.
	70.3	It is not feasible to add body-worn video to the stops, but we have discussed the alternative of adding an incident number or a tracking number to pull the video if needed.	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.



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Section/Topic	Comment Number(s)	Summarized Comment	Department of Justice Response
774.4, Audits of Records in a Shared Gang Database	20.62, 21.62, 71.16	“The audits should involve a review of 10% of the records, randomly selected, which do not involve any of the same records that were examined in the five previous audits.”	No change has been made in response to this comment as the Department already follows common auditing practices in which auditors review randomly-selected records from a proportionally-allocated, statistically-determined sample size and will determine whether System Administrators follow similar practices when reviewing audits.
	20.63, 21.63	“Criminal investigations require accurate data, and the current proposals can do more to protect database integrity.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
Differences Between Chapter 7.5 and Chapter 7.6	27.04, 34.6, 63.6	<p>Adopt the following sections from Chapter 7.5 into Chapter 7.6:</p> <ul style="list-style-type: none"> <li>• 750.6(e) – Requiring that agencies demonstrate a need and right to know before access can be granted and provide information about who, within that agency, would have access to the database</li> <li>• 751.2 – Providing guidance for monitoring the use of gang databases</li> <li>• 755.2 – Requiring audits at least three times per calendar year, rather than once a year</li> <li>• 756 – Imposing limits on the sharing of paper records</li> <li>• 756.8 – Requiring that an investigation into allegations of misuse be initiated within five days, rather than providing no timeline for a mandatory investigation.</li> </ul>	The Department accepts this comment and has incorporated language and/or new sections into these regulations specifying the requested information.

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General Recommendations for the Regulations	62.6	“I urge the California Department of Justice to include stronger, explicit, affirmative civil rights protections in its regulations that ensure a fair application of the regulation, and a lot of this should primarily involve restricting the discretion of officers at every stage in determining who is part of these databases.”	Many modifications were made to these regulations in response to the comments received during the 45-day comment period in an effort to strike a balance between the various concerns expressed by the public.
General Opposition	20.64, 21.64, 28.3, 73.7	These regulations should be withdrawn/rejected.	The Department is moving forward with these regulations for the reasons stated in the ISOR, AISOR, and Second Addendum to Initial Statement of Reasons.
	28.2	“The proposed rule has a disparate impact on communities of color.... If finalized as written, the proposed rule would undermine evidence that deviant self-concept can contribute to further delinquent behavior and compromise social opportunity and life path.”	No change has been made in response to this comment, which is interpreted to be an observation rather than a specific recommendation of any change to these regulations.
	30.01, 65.01, 71.01	General opposition.	The Department is moving forward with these regulations for the reasons stated in the ISOR, AISOR, and Second Addendum to Initial Statement of Reasons.
	30.02, 30.10, 73.1, 73.3, 73.7	These regulations should reflect the fundamental principle that associating with or participating in a street gang is not a crime. The collection and archiving of intelligence on persons engaging in lawful behavior is not consistent with Assembly Bill 90, the federal	No change has been made in response to this comment because Title 28 of the Code of Federal Regulations does not limit the content of shared gang databases to convictions. An arrest which satisfies the definition of an “offense consistent with gang activity” must be based on reasonable suspicion that

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		constitution, or California’s constitution.”	the individual is involved in criminal activity. The Department believes that such arrests are relevant criminal intelligence and should be included.
	34.1, 63.1	“[T]he proposed regulations fall far short of the purpose of the legislation, do not satisfy the Legislature’s specific instructions to ground these regulations in existing evidence, and in some cases directly conflict with the authorizing legislation.”	Many modifications were made to these regulations in response to the comments received during the 45-day comment period in an effort to resolve these concerns.
	59.1	<p><i>This comment references the CalGang Database regulations but has been included as the Department made a change to the Shared Gang Databases regulations in response.</i></p> <p>“The proposed CalGang regulations allow law enforcement agencies to surveil and criminalize poor black and brown people for simply living ordinary lives. It’s an affront to the notion that one is presumed innocent until proven guilty.”</p>	The Department has added subdivision (d) to section 770 and subdivision (b) to the new section 771.6 to specify the reasonable suspicion requirement for designation. Furthermore, shared gang databases are intelligence databases and the inclusion in a shared gang database is not evidence that a criminal act has been committed.
	62.1	“[T]he DOJ has not properly interrogated how it actually constructs crime and who is criminal through regulations like these. The proposed regulations would expand definitions of what is criminal to innocuous forms of expression and association, oftentimes things that are merely correlated with gang activity.”	No change has been made in response to this comment as shared gang databases are intelligence databases and the inclusion in a shared gang database cannot be used as evidence that a criminal act has been committed as provided in subdivision (e) of section 770, rather that reasonable suspicion exists that the person actively participates in a criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal

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			gang activity, or the person willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang.
	65.01	These regulations “fall short of the statute’s express requirements and the enactment’s goal, which was to protect all Californians.”	Law enforcement agencies use the CalGang database to protect Californians from gang-related criminal activity. Nevertheless, many modifications were made to these regulations in response to the comments received during the 45-day comment period, including the inclusion of additional safeguards when a shared gang database is accessed by out-of-state agencies and federal agencies.
	71.02, 71.03	The proposed regulations do not achieve the intended goals of AB 90 because they do not create a more accurate shared gang database, will not be fairly administered, and will not be useful in investigating and preventing crime.	Many modifications were made to these regulations in response to the comments received during the 45-day comment period in an effort to resolve these concerns.
	71.21	“The proposed regulations would continue the expansion of gang databases nationally and internationally, as well as their use in creating other surveillance systems, despite flawed regulations that create inaccuracy and ultimately violate human rights and constitutional rights. The proposed regulations do not acknowledge our experiences or address any of our concerns.”	No change has been made in response to this comment as the Department considered all timely and relevant comments and evaluated concerns from both advocacy groups and the law enforcement community when drafting these regulations.

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<b>Section/Topic</b>	<b>Comment Number(s)</b>	<b>Summarized Comment</b>	<b>Department of Justice Response</b>
	75.1	We do not agree with these regulations because of how vague and ineffective they are.	Many modifications were made to these regulations in response to the comments received during the 45-day comment period in an effort to resolve these concerns.
General Support	57.5	General support.	No change is needed in response to this comment.