

## California Code of Regulations

### Title 11, Division 1

Chapter 7.5: Department of Justice Regulations for the Fair and Accurate Governance of the CalGang Database.

#### **Article 1. General**

##### **§ 750. Title and Scope.**

This Chapter shall be known as the “Department of Justice Regulations for the Fair and Accurate Governance of the CalGang Database,” and may be cited as such and referred to herein as “these regulations.” Commencing on January 1, 2020, the provisions of these regulations shall govern the policies and procedures of the CalGang database. These regulations shall not apply to any future shared gang databases in the State of California; those shall be regulated by Chapter 7.6 of the California Code of Regulations, title 11, sections 770 to 775.6.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code, and Section 70615, Government Code.

#### **Article 2. Purpose of the CalGang Database and Definitions**

##### **§ 750.2. Purpose of the CalGang Database.**

The objective of the CalGang database is to provide law enforcement agencies with an accurate, timely, and electronically-generated database of statewide gang-related intelligence information. The CalGang database is not designed to provide Users with information upon which official actions may be taken. Rather, the CalGang database shall only be used as a means of identifying the Node or User Agencies who supplied the information in the CalGang database. Inclusion in the CalGang database cannot be the basis of an official action, rather, the underlying source documents must be used. All records and information contained in the CalGang database are confidential and are for the use of law enforcement agencies only.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

**§ 750.4. Definition of Key Terms.**

- (a) “Access” means the ability to do one or more of the following: view, query, add, delete, or retrieve records in the CalGang database depending on the User’s level of access to the database.
- (b) “Agency” means any law enforcement agency.
- (c) “Audit” means the process of objective examination of the CalGang database pertaining to the maintenance of records, as well as the examination of a sample of randomly-selected records to determine whether the CalGang database is in compliance with these regulations.
- (d) “CGNAC” means the California Gang Node Advisory Committee.
- (e) “Contact” between a law enforcement officer and a potential Gang Member or Gang Associate means any observation of a person by a law enforcement officer or any lawful interaction between a person and a law enforcement officer.
- (f) “Criminal predicate” means that there exists a reasonable suspicion based on the analysis of legally obtained information that the subject of the information is, or may be involved in, definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.
- (g) “Department” means the California Department of Justice.
- (h) “Dissemination” means the sharing of criminal intelligence among law enforcement authorities in any Agency or Agencies on a need to know and a right to know basis.
- (i) “Gang Associate” means a person who satisfies the requirements set forth in subdivision (c) of section 752.6.
- (j) “Gang Member” means a person who satisfies the requirements set forth in subdivision (b) of section 752.6.
- (k) “Juvenile” means a minor or a person between the ages of 13 through 17.
- (l) “Need to know” means a state of facts that supports the legitimacy of access to specific intelligence by a person or an Agency with a right to know. The “need to know” shall be pertinent to and necessary to the performance of a specific law enforcement activity.
- (m) “Node” means a geographically located cluster of participating law enforcement agencies with access to the CalGang database that may exist from time to time.
- (n) “Node Administrator” means a person who is appointed by the Node Agency to act as the leader of that Node. The Node Administrator is responsible for organizing, training, providing

technical support, and coordinating the information collection activities of User Agencies in the Node.

(o) “Node Administrator’s Designee” means a person selected by the Node Administrator to act as the Node Administrator when the Node Administrator is not available.

(p) “Node Agency” means the law enforcement agency where a Node Administrator is located.

(q) “Non-User” means a person or an Agency that does not have access to the CalGang database.

(r) “Offense consistent with gang activity” means either those offenses that are listed in subdivision (a) or (e) of Penal Code section 186.22; Penal Code section 186.26 or 186.28; or those offenses committed in a manner described in subdivision (b)(1) of Penal Code section 186.22.

(s) “Peer Audit” means an audit of a Node’s CalGang database records that is conducted by two Node Administrators, or the Node Administrators’ Designees, neither of whom represent the Node or User Agency being audited.

(t) “Purge” means the elimination of any record from the CalGang database and/or any printed form of the record when it is no longer in compliance with these regulations.

(u) “Reasonable suspicion” means that state of known information which establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that a person or an organization is involved in a definable criminal activity or enterprise.

(v) “Record” means information contained in the CalGang database that pertains to a particular person.

(w) “Reliable source” means someone who provides information that the officer reasonably believes is sufficiently reliable based on the totality of circumstances that may include, but is not limited to, the following factors: (1) basis of knowledge; (2) veracity; and (3) reliability.

(x) “Revoked,” as it applies to a User’s account, means the account is invalid and the User is permanently prohibited from accessing the account.

(y) “Right to know” means the status of being an Agency or a person engaged in a law enforcement activity that, because of official capacity and/or statutory authority, may have access to the CalGang database if there is a need to know.

(z) “Source documents” means documentation that supports one or more criterion entered into a person’s record in the CalGang database. Such documents may include, but are not limited to, arrest reports, field interview cards, photographs, and jail records.

(aa) “Suspended,” as it applies to a User account, means that the User’s access to the account is prohibited for a defined period or until satisfaction of conditions under these regulations.

(bb) “System misuse” or “account misuse” means unauthorized access or misuse of information in the CalGang database.

(cc) “Unauthorized access” means access by a person to the CalGang database who does not have a need to know and a right to know or who is not authorized by these regulations to access the database.

(dd) “User” means authorized employees listed within paragraph (6) of subdivision (k) of Penal Code section 186.36 whose employment duties require access to the CalGang database.

(ee) “User Agency” means a law enforcement agency that has access to the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.22, 186.26, 186.28, 186.34, 186.35, and 186.36, Penal Code.

### **Article 3. Access to the CalGang Database, Admission, and Dissemination of Intelligence**

#### **§ 750.6. Access to the CalGang Database.**

(a) Access to the CalGang database is not automatically granted to all employees of a User Agency; rather access shall be limited to employees meeting the definition of User in subdivision (dd) of section 750.4.

(b) Prior to being granted access to the CalGang database, all Users shall undergo the training prescribed in subdivision (b) of section 751.8.

(c) User Agencies shall enter into a written memorandum of understanding or user agency agreement, consistent with these regulations, with their respective Node Agency before a person employed by the User Agency may receive access to the CalGang database. Node Administrators shall provide a copy of any such agreement to the Department upon request.

(d) Before completing the training referenced in subdivision (b) of section 751.8, all Users shall complete a CalGang User Agreement form (revised February 2019), incorporated by reference herein. A physical copy of each User’s form shall be kept on file by the Node

Administrator. The Node Administrator shall forward a copy of each completed form to the Department.

(e) An Agency that is interested in accessing the CalGang database shall submit a written request to the Department or the local Node Administrator on the Agency's letterhead. The written request shall provide the following:

(1) A reason for its need to access the CalGang database.

(A) The Agency shall demonstrate a need to know and a right to know to satisfy this subparagraph.

(2) The number of Users who will be accessing the CalGang database at that Agency and the level of access that is requested for each User.

(3) The Agency's assigned originating agency identifier (ORI) number, if applicable.

(4) The addresses of the facilities within the Agency where Users will access the CalGang database.

(5) A point of contact and a training coordinator, who meets the definition of User in subdivision (dd) of section 750.4. If the Agency's point of contact and training coordinator are two different persons, the Agency shall identify both.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

#### **§ 750.8. Limitations to the Access Provided to an Out-of-State or Federal Agency.**

If the Department is contacted by an out-of-state or a federal agency with a request to access records in the CalGang database, the Department shall review the request and determine if the Department will enter into a memorandum of understanding with that agency consistent with these regulations. An out-of-state or a federal agency shall not utilize information from the CalGang database, other than for criminal investigative purposes, as permitted under this chapter, and any such memorandum of understanding shall include an agreement by the out-of-state or federal agency to comply with such restriction and all other requirements of these regulations.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 751. The Node Administrator's Role and Admission as a Node Agency.**

(a) A Node Agency is responsible for maintaining operational control and system supervision over its Node. A Node Agency shall ensure that all User Agencies and Users in its Node adhere to these regulations and any applicable federal, state, or local laws, policies or ordinances related to the CalGang database, which shall protect the system and data integrity.

(b) A written request that is submitted by an Agency that is interested in becoming a Node Agency shall be reviewed by the Department. When the Department makes a determination in response to such a request, the Department shall consider the following factors:

(1) The ability of an Agency to serve in a leadership role in organizing and coordinating information collection activities of the agencies within a region to be served by a new Node.

(2) The geographic area to be covered.

(3) The ability of the requesting Agency to provide technical support to maintain the Node Agency.

(4) The ability of the requesting Agency to pay the costs associated with becoming a Node Agency, including recruitment, training of Users, sufficient staff to manage the Node, and travel expenses for participation in CGNAC meetings.

(5) Whether the appointed Node Administrator of the Node Agency, or the Node Administrator's Designee, shall participate in the CGNAC, which includes attending all meetings and participating in audits.

(c) Once the Department determines that an Agency is capable of becoming a Node Agency, it shall enter into a memorandum of understanding with the Node Agency. The memorandum of understanding will be consistent with these regulations and it shall be kept on file by the Department.

(d) The Department shall be responsible for creating administrative accounts for each Node Administrator. Requests to create an administrative account shall be made in writing directly to the Department. The Department shall notify the requesting party in writing whether authorization is granted. Such written requests and authorizations shall be made either electronically or by mail.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 751.2. CalGang Database User Terms and Account Security.**

(a) Each User Agency shall identify at least one point of contact and report the point of contact to its Node Administrator and the Department.

(1) The point of contact shall help facilitate training requests, retrieval of source documents, and any updates or changes to the CalGang database.

(2) Any time a User Agency's changes its point of contact, it shall notify its Node Administrator. The Node Administrator shall notify the Department within 30 calendar days from the date it received notice from the User Agency to report the new contact information.

(b) Node or User Agencies that enter information into the CalGang database are responsible for its legality, relevance, accuracy, timeliness, and completeness.

(c) A Node Administrator is responsible for the prompt deactivation of accounts within its Node. The accounts of Users separated from employment with their Node or User Agency shall be suspended, and/or revoked when the Node Administrator is notified of the separation.

(1) A User Agency shall inform its Node Administrator, or the Department if the Node Administrator is unavailable, of a separation within 30 calendar days from the date of the separation.

(2) A Node Administrator or the Department shall suspend and/or revoke the account within 10 calendar days after receiving the notice of separation.

(d) An account shall be suspended and/or revoked if account privileges are no longer applicable to a User's employment duties or if the User's level of access has been changed.

(e) An account shall be suspended and/or revoked, if it is determined that the account has been misused. Such an account, if suspended, may only be reinstated at the direction of the Department, the Node Administrator, or the Node Administrator's Designee.

(1) Users who share their passwords with others shall be barred from using the CalGang database and their accounts shall be suspended and/or revoked.

(2) Upon discovery, a User Agency shall report any account misuse to its Node Administrator. The Node Administrator shall report such account misuse to the Department within five calendar days from the date the User Agency informed the Node Administrator of the account misuse.

(f) Any User account that has been inactive for 90 calendar days shall be suspended. Up to 180 calendar days following a suspension under this subdivision, a User may submit a written request to the Node Administrator to reactivate the User's account. If reinstatement is not timely requested, access to the User account shall be revoked.

(1) Exceptions shall be made to this subdivision for Users who take an authorized leave of absence. The User or User Agency shall notify the Node Administrator in writing within 30 calendar days from the date the leave of absence commences.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

#### **§ 751.4. Specific Policies and Procedures Set by Node Agencies and User Agencies.**

(a) Node and User Agencies may establish more restrictive policies and procedures than those set forth by these regulations as long as they relate to either User access, use of the CalGang database, or the entry of information into the CalGang database.

(1) A Node Agency shall not impose more restrictive policies and procedures on a User Agency without the consent of the User Agency.

(1) A Node Agency that imposes more restrictive policies and procedures on a User Agency with its consent shall notify the Department in writing before those policies and procedures are implemented to obtain the Department's approval.

(2) If a User Agency imposes more restrictive policies and procedures on itself, it shall provide a written notice to its Node Administrator and the Department describing the restrictions.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

#### **§ 751.6. Proxy Query to the Information Contained in the CalGang Database.**

(a) A User shall not permit any person access to his or her CalGang account. However, a User may disseminate information from the CalGang database via proxy query to a Non-User that demonstrates a right to know and a need to know.

(1) The Non-User requesting a proxy query shall complete the Proxy Query Agreement form (revised March 2019), incorporated by reference herein, prior to receiving any data

from the CalGang database. Once the Non-User completes the Proxy Query Agreement form, it shall send it to the User. A physical copy of each form shall be kept on file by the User. The User shall provide the Department with a copy of each completed Proxy Query Agreement form.

(2) When performing a proxy query, the User shall enter into the CalGang database the information the Non-User provided in the Proxy Query Agreement form as the reason for conducting the proxy query.

(3) If a User disseminates information from the CalGang database to a Non-User, the User shall utilize the proxy query feature within the CalGang database to conduct a search for the requesting Non-User.

(b) A User shall not disseminate information to a Non-User through the proxy query feature on a regular basis. If the same Non-User requests information through a proxy query more than 12 times per year, the User shall refer the Non-User to its Node Administrator or the Department to inquire about gaining access to the CalGang database pursuant to Article 3.

(1) The Department shall audit proxy query usage annually and track the number of proxy query requests made by each Non-User.

(c) Nothing in subdivision (a) limits the sharing of information in the CalGang database if permitted under section 754 or Penal Code sections 186.34 and 186.35.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

#### **Article 4. Training, Exam, and Requirements to be an Instructor**

##### **§ 751.8. User Training.**

(a) Training shall only be conducted by an instructor approved by the Department, a Node Administrator, or a Node Administrator's Designee. Requirements to become an approved instructor are set forth in section 752.2.

(b) At a minimum, instruction from an approved instructor shall address the following:

(1) Definitions for a "criminal street gang," "criminal predicate," and "reasonable suspicion."

- (2) The criteria to enter a person as a Gang Member and/or a Gang Associate into the CalGang database.
  - (3) Any federal, state and local laws, policies and ordinances regarding criminal intelligence information.
  - (4) Physical and technical database security and data dissemination.
  - (5) Practical, hands-on system usage.
  - (6) How to upload photographs to the CalGang database.
  - (7) Best practices for gathering criminal intelligence.
  - (8) Best practices for mitigating the entry and dissemination of false or incorrect information into or from the CalGang database.
  - (9) Notices, responses to inquiries, and removal guidelines in accordance with Articles 7, 8, and 9.
  - (10) Any policies, procedures, and guidelines pertinent to the CalGang database.
  - (11) Consequences of system misuse in relation to the CalGang database.
  - (12) The impact of releasing data for unauthorized purposes, including, but not limited to, how the unauthorized release of data may affect immigration proceedings and employment, housing, or military screening.
  - (13) Implicit bias, taking into account an agency's existing training on that topic.
  - (14) The entry of proxy query requests.
- (c) Additional required training may be added by the training instructor or the Node Administrator.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code, and Section 70615, Government Code.

**§ 752. Initial Exam Information and Recertification Exam.**

- (a) Once instruction is completed, upon logging into the CalGang database, all Users shall electronically complete a CalGang User Agreement form and take an initial certification exam on the curriculum described in subdivision (b) of section 751.8.
- (b) Every 24 months after the date of initial certification or recertification, all Users shall take a recertification exam and electronically complete a new CalGang User Agreement form. The

CalGang database will prompt a User to take the recertification exam upon login once the User's certification has expired.

(c) Upon completing an initial certification or recertification exam, the User will be notified immediately as to whether the User passed or failed the exam. The exam, results, and forms shall be stored within the CalGang database and shall be viewable only to the Node Administrators, IT contractors, and the Department.

(d) The Node Administrator shall allow a User no more than three opportunities to retake the exam. If the User fails to pass the exam after three opportunities, the User's access shall be suspended. Once the User's access is suspended, the User shall contact the Node Administrator to complete refresher training, the content of which shall be determined by the Node Administrator. The Node Administrator shall restore access once the User completes the refresher training and passes the recertification exam.

(e) A failure to log in for 180 days will require the User to take the recertification exam upon reinstatement of the User's account. A failure to log in for one year will result in the User having to be retrained by any Node Administrator or a Node Administrator's Designee.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

#### **§ 752.2. Requirements to Become an Approved Instructor.**

(a) Instructors approved by the Department, a Node Administrator, or a Node Administrator's Designee shall be graduates of the training outlined in subdivision (b) of section 751.8, and tested in system proficiency. Instructors shall take a Department-approved course of instruction that shall provide an in-depth familiarization with all system applications, intelligence file guideline requirements, proper use, and any additional administrative requirements.

(b) The Department, a Node Administrator, or a Node Administrator's Designee shall conduct the recertification training of previously approved instructors. Recertification training shall include, but not be limited to, system changes or updates, new mandates, and regulations.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

#### **Article 5. Criteria for Designation in the CalGang Database.**

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

(a) The criteria to designate a person as a Gang Member or a Gang Associate in the CalGang database are:

(1) The person has admitted to being a Gang Member or a Gang Associate under circumstances that do not undercut truthfulness. The law enforcement officer shall document the relevant circumstances of the admission including, but not limited to: the location of the contact; the person(s) present during the conversation; the admitting person's demeanor; and whether the admitting person appeared to be under the influence of drugs or alcohol.

(2) The person has been arrested for an offense consistent with gang activity.

(3) The person has been identified as a Gang Member or a Gang Associate by a reliable source.

(4) The person has been seen associating with persons meeting the criteria for entry or who have previously been entered as a Gang Member into the CalGang database.

(5) The person has been seen displaying one or more symbols and/or hand signs tied to a specific criminal street gang. The law enforcement officer shall document the specific symbols and/or hand signs that are tied to the criminal street gang.

(6) The person has been seen at one or more gang-related addresses or locations. The law enforcement officer shall document the specific address and/or location(s) and to which criminal street gang such address and/or location(s) is related.

(7) The person has been seen wearing a style of dress or accessory that is tied to a specific criminal street gang. The law enforcement officer shall document the specific items and to which criminal street gang the style of dress or accessory is related.

(8) The person has one or more tattoos, marks, scars, or branding indicating criminal street gang membership. The law enforcement officer shall document a description of the tattoos, marks, scars, or branding and the location of each on the person's body.

(b) The existence of criteria may be determined as a result of information learned or observed by law enforcement on separate occasions.

(c) The existence of all criteria shall be supported by source documents.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 752.6. Minimum Age of Entry and Requirements to Enter a Person into the CalGang Database.**

(a) No persons under the age of 13 shall be entered into the CalGang database.

(b) A person may be initially entered into the CalGang database and designated as a Gang Member when at least two criteria listed in subdivision (a) section 752.4 are found to exist through investigation, based on a trained law enforcement officer's reasonable suspicion, provided that the criminal street gang's existence has been, or is concurrently, documented in the database.

(c) A person may be initially entered into the CalGang database and designated as a Gang Associate when the criterion in subdivision (a)(4) of section 752.4 and at least one other criterion listed in subdivision (a) of section 752.4 are found to exist through investigation, based on a trained law enforcement officer's reasonable suspicion, provided that the criminal street gang's existence has been, or is concurrently, documented in the database.

(1) A Gang Associate shall not be entered into the CalGang database unless that person's record in the CalGang database is linked to the record of a Gang Member.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 752.8. Other Rules Pertaining to the Entry of a Person in the CalGang Database.**

(a) Following the initial designation of a person in the CalGang database, a User may enter subsequent information into the CalGang database that pertains to that person if the person meets a minimum of one criterion during a contact with a trained law enforcement officer. If a person's initial entry has been purged, the person may only be entered into the CalGang database again if the person meets the requirements set out in either subdivision (b) or (c) of section 752.6.

(b) A tattoo, mark, scar, or branding that remains unmodified and on the same place on a person's body that was used previously to satisfy the criterion set forth subdivision (a)(8) of section 752.4 shall not be used thereafter to satisfy that same criterion again unless it meets the elements set forth in subdivision (d) or the record of that person has since been purged from the CalGang database.

(c) If a person has multiple tattoos, marks, scars, or brandings that are the same or similar, and each one of those tattoos, marks, scars, or brandings is on a different location on the person's body, each tattoo, mark, scar, or branding may be used to satisfy the criterion set forth in subdivision (a)(8) of section 752.4. However, each one of those tattoos, marks, scars, or brandings shall only be documented to meet that criterion once each, and cannot be re-entered into the CalGang database as a criterion on subsequent occasions, unless it meets the elements set forth in subdivision (d) or the record of that person has since been purged from the CalGang database.

(d) A law enforcement officer may document a tattoo, mark, scar, or branding as described in subdivisions (b) and (c) to meet the criterion in subdivision (a)(8) of section 752.4 on subsequent occasions only if the person is in a public setting and is openly displaying, presenting, or flashing the tattoo, mark, scar, or branding as a means of intimidation. If the law enforcement officer documents the tattoo, mark, scar, or branding pursuant to this subparagraph, the law enforcement officer shall document the relevant circumstances of the contact including, but not limited to: the type of public setting in which the contact occurred and a description of how the tattoo, mark, scar, or branding was openly displayed, presented, or flashed.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

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

(a) An organization may be designated as a criminal street gang and entered into the CalGang database as such only if it meets all of the following:

(1) The Node or User Agency has articulable reasonable suspicion for making the designation. The Node or User Agency shall document the basis of the reasonable suspicion.

(2) The association or organization comprises three or more persons who meet the criteria to be designated as Gang Members pursuant to Article 5. The User Agency shall notify the Node Administrator of the association or organization and request that the association or organization be classified as a criminal street gang and be entered as such into the CalGang database. Once the Node Administrator approves the request, the User Agency shall create

records in the CalGang database for the Gang Members that belong to the criminal street gang.

(3) The association or organization has a common sign, symbol, and/or name. The Node or User Agency shall document the specific sign, symbol, and/or name that is tied to the association or organization and explain why it is interpreted as belonging to the proposed criminal street gang.

(4) The association, organization, or its members have collectively or individually engaged in a pattern of definable criminal activity. The Node or User Agency shall document the reasonable suspicion stemming from this definable criminal activity. If the association, organization, or its members have collectively or individually been arrested for an offense consistent with gang activity, the Node or User Agency shall identify the type of crime that the Node or User Agency reasonably believes was committed and include that as a part of the documentation.

(b) A new criminal street gang shall only be added into the CalGang database by the Department or a Node Administrator. If a Node or User Agency determines that a new criminal street gang should be added to the CalGang database, it shall submit in writing the information provided in subdivision (a) to either the Department or its Node Administrator.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

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

### **§ 753.2. Supervisory Review Process.**

Prior to any entry into the CalGang database, all criminal street gang intelligence data shall be reviewed by the appropriate supervisory classification pertinent to the organizational structure of the Node or User Agency. The review shall determine whether the criminal street gang intelligence data was obtained in violation of any applicable federal, state, or local law; policy; or ordinance.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 753.4. A Node or User Agency’s Discretion to Delete Unsupported Records.**

(a) At its discretion, a Node or User Agency that created a record or entered subsequent criteria for a person in the CalGang database may delete the entry or entries it created if:

- (1) During self-auditing the Node or User Agency finds that the supporting documents are missing or incomplete.
- (2) The Node or User Agency finds that the record is not in compliance with Article 9.
- (3) Intelligence was obtained in violation of applicable federal, state, or local law, policy, or ordinance.
- (4) For any other reason as long as it is substantiated.

(b) Ten calendar days prior to deleting a record or an entry created by the deleting Node or User Agency, the deleting Node or User Agency shall communicate in writing with other Node or User Agencies that have entered additional information to support that record or entry in the CalGang database. The written communication shall identify the record or entry the deleting Node or User Agency seeks to delete, the reason for its deletion, and the date it anticipates deleting the record or entry.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

**Article 7. Notice of Inclusion in the CalGang Database**

**§ 753.6. Notifying a Person of Inclusion in the CalGang Database.**

(a) Pursuant to subdivision (c) of Penal Code section 186.34, a person, and at least one parent or guardian of the person if the person is a juvenile, shall be notified of the person’s inclusion in the CalGang database in writing prior to the person being entered into the CalGang database.

(b) Any such notice may, at the discretion of the Node or User Agency delivering the notice, be delivered only: (1) in person at the time of contact or to the physical address provided by the person at the time of contact, or (2) by mail to the physical address provided by the person at the time of contact or a physical address that the User or Node Agency discovered by utilizing other means that are accessible to the Node or User Agency, provided that such access is permitted by law. A law enforcement officer will presume that a juvenile resides with at least one parent or

guardian, and that the physical address provided by the juvenile at the time of contact is the correct physical address for at least one parent or guardian.

(1) Each time a law enforcement officer makes contact with a juvenile and suspects that the juvenile will be designated as a Gang Member or a Gang Associate in the CalGang database, at the time of contact, the law enforcement officer shall confirm whether the juvenile lives with a parent or a guardian at the physical address provided by the juvenile. If the juvenile does not live with a parent or guardian, the law enforcement officer shall request the physical address of such parent or guardian for the purposes of satisfying the notice requirements set forth by subdivision (c) of Penal Code section 186.34.

(c) In addition to the requirements set forth under subdivision (c) of Penal Code section 186.34, a written notice required thereunder shall clearly indicate:

(1) Whether the person is to be designated as a Gang Member or Gang Associate.

(2) The basis for the designation.

(3) A description of the process to contest designation, including the name of the Node or User Agency to contact.

(d) A Node or User Agency that issues the notice may include the following additional information within the notice:

(1) The name of the criminal street gang that the person is connected to in the database.

(2) A link to the CalGang page on the Attorney General's website that shall provide an explanation of how the information entered into the CalGang database will be used and the length of time that the person's information shall remain within the CalGang database.

(e) A Node or User Agency shall document the attempted delivery of each notice. Each record shall contain:

(1) The name of the recipient of the notice and, if different, the person to which the notice pertains.

(2) The date the notice was mailed or attempted to be delivered in person to the recipient and the method of delivery.

(3) If the notice was undeliverable, the Node or User Agency shall, for mailed notices, document the date it received the "returned to sender" notification and retain a copy of the notification in its files, and, for attempts to deliver notices in person, document by notation or otherwise that the notice was undeliverable.

(f) The notice requirement shall be satisfied upon the first attempt if the notice is: (1) delivered in person to the person to whom it pertains, or in the case of a juvenile, to the person and at least one parent or guardian of the person to whom the notice pertains, or (2) mailed to the person to whom it pertains or, in the case of a juvenile, the person and at least one parent or guardian of the person to whom the notice pertains, and the notice is not returned to sender as undeliverable. If a juvenile to whom the notice pertains resides at the same physical address as a parent or guardian, the Node or User Agency shall send two notices to that physical address; one shall be addressed to the juvenile to whom the notice pertains, and the other shall be addressed to the juvenile's parent or guardian. If the first attempt to deliver the notice does not satisfy the foregoing requirements, the notice requirement will nonetheless be satisfied if both of the following are met:

(1) The Node or User Agency has no reasonable alternative method to deliver to that person, or in the case of a juvenile, to the person and at least one parent or guardian of the person to whom the notice pertains.

(2) The Node or User Agency complied with the documentation requirements set out in subdivision (e) of this section.

(g) The notice requirement will not be satisfied on the first attempt if the notice fails to be delivered and the Node or User Agency possesses more than one method of contacting the person. In such a situation, the Node or User Agency shall make a second attempt to deliver the notice to the recipient and it shall use a different method of delivery than the one that was used for the first attempt. The Node or User Agency shall document both attempts as set out in subdivision (e) of this section.

(h) A Node or User Agency shall not knowingly send notice letters to places of employment, schools, or places of higher education unless such a place is also the residence facility of the recipient, such as a school dormitory.

(i) If sending a notice of inclusion to either an adult or a juvenile would compromise an active criminal investigation or the health or safety of a juvenile that is designated in the CalGang database as a Gang Member or a Gang Associate, the Node or User Agency is not required to attempt to deliver a notice under this section or subdivision (c) of Penal Code section 186.34.

(1) If a Node or User Agency does not provide notice pursuant to this subdivision, the Node or User Agency shall nonetheless prepare the form of notice as described in this

section and it shall indicate in the CalGang database that no notice was sent, provide the date the Node or User Agency determined to not send the notice, and provide a summary of the reason(s) for that determination. This documentation shall remain in the CalGang database until the record pertaining to that person is purged from the CalGang database. Nothing in this subdivision restricts the release of a notice under court order or for an in-camera review by a court. Nothing in this section requires a Node or User Agency to disclose any information protected under sections 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

**Article 8. Information Requests, an Agency's Response to Information Requests, and an Agency's Response to a Request for Removal**

**§ 753.8. Information Requests and Verifying the Identity of the Requesting Party.**

- (a) Each Agency may develop a verification of identity form that the Agency may use to determine whether the information request pursuant to subdivision (d) of Penal Code section 186.34 is made by an authorized person.
- (b) If an Agency chooses to develop a verification of identity form, the form may seek information verifying the requesting person's name, address, date of birth, driver license number, state identification number, or state bar number. The Agency shall not have the authority to request from a person, his or her parent or guardian, or an attorney working on behalf of the requesting person, a copy of a birth certificate or documentation of citizenship or immigration status to satisfy its written verification of identity requirement.
- (c) Verification of a person's identity does not have to be done through a government issued identification document; rather proof of identity may be presented through an acknowledgement form prepared, signed, and endorsed by a notary public. This acknowledgement form shall accompany the Agency's verification of identity form, if that Agency uses a verification of identity form.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

**§ 754. An Agency's Response to an Information Request.**

(a) An Agency's response to an information request pursuant to subdivision (d) of Penal Code section 186.34 shall be communicated in writing and shall include:

- (1) Verification that the request was received and the date of its receipt.
- (2) Whether the person is designated as a Gang Member or a Gang Associate in the CalGang database.
- (3) Information as to the basis for the designation, including at least the initial criteria that resulted in the designation.
- (4) A description of the process to contest a designation, including the name of the Agency to contact.
- (5) A reference to Penal Code section 186.35 regarding the person's right to petition the court to review the designation.

(b) An Agency responding to the request may, but is not required to, include the following additional information within the response:

- (1) The name of the criminal street gang that the person is connected to in the database.
- (2) A link to the CalGang page on the Attorney General's website that shall provide an explanation of how information entered into the CalGang database is used and the length of time that a person's information shall remain within the CalGang database.

(c) If an Agency receives an information request concerning a person who has a record in the CalGang database, the responding Agency shall contact the Node or User Agency that created the entry to ensure that the dissemination of the requested information does not compromise an active criminal investigation or the health or safety of a juvenile that has been designated as a Gang Member or Gang Associate in the CalGang database.

(d) Notwithstanding the foregoing, if responding to an information request from either an adult or a juvenile would compromise an active criminal investigation or the health or safety of a juvenile who is designated as a Gang Member or a Gang Associate in the CalGang database, the Agency that received the request is not required to provide a response.

(1) If an Agency does not respond to an information request pursuant to this subdivision, it shall nonetheless prepare the form of response as described in subdivision (a) of this section, and document a summary of reasons why a response was not sent and the date when this determination was made, and it shall maintain this documentation until the record pertaining to that person is purged from the CalGang database. Nothing in this subdivision restricts the release of a response under court order or for an in-camera review by a court. Nothing in this section requires a local law enforcement agency to disclose any information protected under sections 1040 or 1041 of the Evidence Code or section 6254 of the Government Code.

Note: Authority cited: Section 186.36 of the Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

#### **§ 754.2. Agency's Response to a Request for Removal.**

An Agency shall respond to a request for removal by a person in accordance with subdivision (e) of Penal Code section 186.34. Even after deemed to be a denial upon expiration of the thirtieth day following the request for removal, an Agency may, but is not required to, deliver a notice of denial and the reason for the denial.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

### **Article 9. Retention of Records, Purging, and Source Documents.**

#### **§ 754.4. Retention Period for Records.**

(a) A person's record shall be retained in the CalGang database for up to five years, and upon termination of the retention period, the record shall be automatically purged from the database.

(b) If additional criteria is added to a person's record in the CalGang database, the five-year retention period will be reset to begin on the date of entry of such additional criteria.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§754.6. Retention Period for Notice of Inclusion.**

A Node or User Agency shall maintain copies of each notification to a recipient that was issued pursuant to subdivision (c) of Penal Code section 186.34 and the related documentation required under section 753.6, for the length of time a record about the person to whom the notice pertains is in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

**§ 754.8. Retention Period for Information Requests and Responses.**

An Agency shall maintain copies of all information requests under subdivision (d) of Penal Code section 186.34 and responses for the length of time a record about the person to whom the information request pertains is in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

**§ 755. Source Documents.**

(a) A Node or User Agency that enters information into the CalGang database shall maintain the source documents supporting the entry. The source documents shall be retained for the same period as the CalGang database record they support.

(b) Photographs are permitted to be used with source documents only if they are legally obtained.

(c) At any time source documents are found to be missing or incomplete to adequately support a criterion, the Node or User Agency shall remove the unsupported criterion.

(1) Removal shall be conducted within 30 calendar days from the date the Node or User Agency discovered that the source documents were lacking or inappropriate.

(2) If a record in the CalGang database contains both adequate and inadequate source documents, the record shall remain in the database on the basis of the adequate source documents if there is enough information present to satisfy, as the case may be, the two criteria requirement pursuant to section 752.6.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**Article 10. Audits.**

**§ 755.2. Peer Audits of Records in the CalGang Database.**

(a) At least three times per calendar year, Node Administrators shall conduct Peer Audits on a sample of randomly selected records from within their Node. Peer Audit assignments shall be randomly assigned by the Department and shall be completed within 60 calendar days from the date they are assigned. Upon completion of the Peer Audit assignments, Node Administrators shall report the results of the audit(s) to the Department. Any record and/or criteria found to be out of compliance with Articles 5 and 9 shall be purged from the CalGang database within 30 calendar days of the completion of the audit unless such record(s) and/or criteria were entered prior to January 1, 2020 and were in compliance with entry requirements at the time of entry.

(b) Peer Audits of CalGang shall ensure that:

(1) Each record has a minimum of two criteria that are adequately supported by source documents.

(2) The scheduled purge date is in compliance with the time period provided in Article 9.

(3) Each audited record that was created on or after January 1, 2020, adheres to these regulations.

(c) The Department shall report a summary of the results of all audits annually on the Attorney General's website.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 755.4. Audits of Criminal Street Gangs.**

(a) At least three times per calendar year, Node Administrators shall conduct an audit of all criminal street gangs that contain less than three Gang Members.

(b) Each criminal street gang with more than three members shall be audited every five years from the date of its last audit to ensure that it complies with the criteria set forth by section 753.

(c) If upon auditing, a Node Administrator discovers that a criminal street gang indicated in the CalGang database by a Node or User Agency in that Node has less than three Gang Members in

its Node, the Node Administrator shall verify that the criminal street gang has three or more documented Gang Members across the CalGang database. If it is found that a criminal street gang contains less than three Gang Members in total, the criminal street gang and any records associated with persons entered in connection with that criminal street gang shall be purged from the CalGang database.

(d) Audits of a criminal street gang shall ensure that:

(1) Associations or organizations designated as criminal street gangs have no less than three Gang Members in the CalGang database.

(2) Sufficient reasonable suspicion exists for the criminal street gang to continue being designated as such in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34 and 186.36, Penal Code.

#### **§ 755.6. The Department's Authority to Audit Node and User Agencies.**

(a) The Department may audit any and all records of each Node or User Agency. Each Node or User Agency shall provide such information and documents as the Department may request.

(b) Node or User Agencies that audit their own records shall report their results to the Department in writing within 30 calendar days from the date each audit is concluded.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

#### **Article 11. Information Sharing and Reporting Data to the Department.**

##### **§ 755.8. Information Sharing.**

(a) Release of criminal intelligence information in the CalGang database is on a right to know and need to know basis only. Nothing in this subdivision limits the sharing of information in the CalGang database if permitted by section 754 or Penal Code sections 186.34 and 186.35.

(b) Records shall not be attached to or referenced in any report, with the exception of statistical reports pursuant to subdivision (e). When a reference is necessary, such documents shall only reflect that the information was obtained from a law enforcement source.

(c) Records contained in the CalGang database shall not be disclosed for:

- (1) Purposes of enforcing federal immigration law, unless required by state or federal statute or regulation.
- (2) For employment, housing, or military screening purposes.
- (d) Users are not prohibited or restricted from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of a person or from requesting from federal immigration authorities information regarding a person's immigration status, maintaining such information, or exchanging such information with any other federal, state, or local government entity, pursuant to sections 1373 and 1644 of title 8 of the United States Code.
- (e) All requests for statistics shall be submitted in writing to the Node Administrator and may be released with the approval of the Department. A copy of the request and released statistics shall be forwarded to the Node Administrator and the Department.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

**§ 756. Sharing Information through Printing and Other Mediums.**

- (a) Printing privileges may be granted at the discretion of each Node Administrator. Users shall demonstrate a compelling need to print database information before print privileges are extended.
- (b) Node Administrators shall report all Users with printing privileges to the Department in writing at or before each CGNAC meeting.
- (c) Each Node or User Agency shall ensure that any printed copies of intelligence and investigation information are afforded security to prevent unauthorized access to or use of the data.
- (d) Printed documents that are no longer needed shall be destroyed.
- (e) A User is prohibited from using any other tool including, but not limited to, taking photographs, screenshots, or using computer or cellular phone applications, that would enable a User to copy database information.
- (f) If this section is violated, the Department may take any or all of the actions provided in section 757.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

**§ 756.2. Annual Reporting of Data to the Department.**

(a) Prior to November 15 of each calendar year, Node and/or User Agencies shall provide to the Department the zip code, Agency, race, gender, and age associated with any records that meet the following circumstances:

- (1) The number of times a Node and/or User Agency did not attempt to provide notice pursuant to Article 7 in the immediately preceding 12 calendar months because doing so would have compromised an active criminal investigation.
- (2) The number of times a Node and/or User Agency did not provide notification pursuant to Article 7 in the immediately preceding 12 months because doing so would have compromised the health or safety of a designated juvenile.
- (3) The number of information requests that a Node and/or User Agency received in the immediately preceding 12 calendar months.
- (4) The number of times a request for removal of a record was granted or denied by a Node and/or User Agency in the immediately preceding 12 calendar months.
- (5) The number of times a petition under Penal Code section 186.35 was granted or denied by a court in the immediately preceding 12 calendar months.

Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.34, 186.35, and 186.36, Penal Code.

**Article 12. System Security, Inspection, and Missing Equipment**

**§ 756.4. Equipment Security and Inspection by the Department.**

(a) Measures shall be taken to place terminals and equipment that transmit or receive CalGang database information and any printouts of CalGang database information in an area with physical security that will provide protection from theft, damage, vandalism, or sabotage, and preclude access to and viewing of confidential information by unauthorized persons.

(b) The Department may inspect equipment to ensure that it is in compliance with subdivision (a). A Node or User Agency shall grant the Department access to the Node or User Agency's facilities for this purpose.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 756.6. Notifying the Node Administrator and the Department of Missing Equipment.**

(a) A User Agency shall notify its Node Administrator in writing, within one calendar day, of any missing equipment that could potentially compromise the confidentiality and security of the CalGang database.

(b) The Node Administrator shall notify the Department, within one calendar day, upon discovery of any missing equipment that could potentially compromise the confidentiality and security of the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

**§ 756.8. System Misuse.**

(a) The Department is responsible for overseeing system discipline and conformity with these regulations. Any violation shall be investigated by the head of the User Agency or his or her designee and reported to the Node Administrator and the Department within five business days of learning of any alleged system misuse.

(b) The Node Administrator shall revoke access to the CalGang database for any User who provides unauthorized access to the CalGang database or discloses information from the CalGang database for unauthorized purposes.

(c) Node Administrators are prohibited from creating user accounts that have the same level of access as the Node Administrator without express written authorization from the Department.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

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

**§ 757. Enforcement of these Regulations by the Department.**

(a) If a User violates any law governing the CalGang database, including these regulations, the Department may take any or all of the following actions:

(1) Issue a letter of censure.

(2) Temporarily suspend access to the CalGang database.

(3) Revoke access to the CalGang database.

(b) The Department may suspend and/or revoke a User account if a User fails to adhere to any law governing the CalGang database, including these regulations. This includes failing to adequately document criteria in the CalGang database.

Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.