

California Code of Regulations

Title 11, Division 1

Chapter 7.6: Regulations for the Fair and Accurate Governance of Shared Gang Database

Systems

**Article 1. General**

**§ 770. Title and Scope.**

This Chapter shall be known as the “Department of Justice Regulations for the Fair and Accurate Governance of Shared Gang Database;” it may be cited as such and referred herein as “these regulations.” Commencing on January 1, 2020, the provisions of these regulations shall apply to any shared gang database (as defined in Penal Code section 186.34) in the state of California except those excluded by subdivision (b) of Penal Code section 186.34. However, these regulations do not apply to the CalGang database system, which is governed by Chapter 7.5 of the California Code of Regulations, title 11, sections 750 to 759.5.

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

**Article 2. Definitions**

**§ 770.5. Definition of Key Terms.**

**Color Key**

 = definitions taken from AG’s Model Standards.

 = definition made up from explanations in CalGang System Policies and Procedures.

(a) “Access” means the ability to view, query, add, or retrieve records in a shared gang database.

(b) “Agency” means any law enforcement agency that has access to a shared gang database.

(c) “Audit” means the process of objective examination of a shared gang database pertaining to the maintenance of intelligence files – as well as the examination of the files or a meaningful

1 sample of the files to determine whether the shared gang database is in compliance with these  
 2 regulations.

3 (d) “Committee” means the Gang Database Technical Advisory Committee.

4 (e) “Contacts” are any lawful interactions between an individual and a peace officer.

5 (f) “Criminal Predicate” means that there exists a “reasonable suspicion” based on the analysis  
 6 of legally obtained information that the subject of the information is or may be involved in  
 7 definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable  
 8 criminal conduct.

9 (g) “Database” means any shared gang database.

10 (h) “Dissemination” means the sharing of criminal intelligence among law enforcement  
 11 authorities in any agency or agencies on a need to know, right to know basis.

12 (i) “Department” means the California Department of Justice.

13 (j) “Information” means data from “any legal source” that can be analyzed to determine if it  
 14 provides intelligence.

15 (k) “Gang Associate” means an individual who does anything for the benefit of the gang  
 16 including, but not limited to, active involvement in gang activities.

17 (l) “Intelligence” means the gathering, analysis, storage/maintenance, and sharing of  
 18 information about persons and organizations in support of legitimate policy objectives.

19 (m) “Need to know” means a state of facts that supports the legitimacy of access to specific  
 20 intelligence by a person with a right to know. The need to know must be pertinent to and  
 21 necessary to the performance of a specific law enforcement activity.

22 (n) “Offenses consistent with gang activity” mean those offenses that are listed in subdivision  
 23 (e) of Penal Code section 186.22.

24 (o) “Purge” means the elimination – through destruction of contents that may exist in either  
 25 hard copy or soft copy forms or both – of the record from a shared gang database when it no  
 26 longer is in compliance with Article 8 of these regulations.

27 (p) “Reasonable suspicion” means that state of known information which establishes sufficient  
 28 facts to give a trained law enforcement or criminal investigative agency officer, investigator or

1 employee a basis to believe that there is a reasonable possibility that an individual or  
2 organization is involved in a definable criminal activity or enterprise.

3 (q) A “reliable informant/source” may be, but is not limited to, a law enforcement officer,  
4 family member, friend, neighbor, associate, or fellow gang member. (The case law definition:  
5 “Reliable Informant” means a person whose information has in the past led the police to valid  
6 suspects, or a victim who is an observer of criminal activity, who by calling/contacting the  
7 police, acts openly in the aid of law enforcement. What is the intent here in defining “reliable  
8 informant?”)

9 (r) “Right to know” is the status of being a person or entity engaged in a law enforcement  
10 activity that, because of official capacity and/or statutory authority, may have access if there is a  
11 need to know. The “right to know” must be in the performance of a law enforcement activity.

12 (s) “Source document” means documentation that adequately supports each entry made to a  
13 shared gang database. Such documents may include, but are not limited to, arrest reports or field  
14 interview cards.

15 (t) “System administrator” means a person with administrative oversight of a shared gang  
16 database.

17 (u) “System misuse” is unauthorized access or misuse of data in a shared gang database.

18 (v) “Unique” means different from other criteria listed.

19 (w) “User Agency” means a law enforcement agency that has access to a shared gang database.

21 Note: Authority cited: Section 186.36, Penal Code. Reference: Sections 186.22, 186.36, and  
22 13101, Penal Code.

24 **Article 3. Access to a Shared Gang Database and Dissemination of Intelligence.**

25 **§ 771. Access to a Shared Gang Database.**

26 (a) A shared gang database shall be accessible to an agency that has undergone the training  
27 prescribed by section 772 of these regulations. Access is not automatically granted to all  
28 employees of a participating agency, rather its use shall be limited to sworn officers and  
29 individuals listed within subdivision (k) of Penal Code section 186.36.

1 (b) A user agency that is permitted to use a shared gang database may share intelligence from  
2 that database with an agency and/or other parties that do not use that particular database to track  
3 gang intelligence. The user agency may release information from the database only to persons  
4 who demonstrate a right to know and need to know.

5 (1) The user agency that disseminates the information shall record what information was  
6 released, when it was released, to whom it was released and why it was released. The user  
7 agency shall keep a record of this information for the same length of time as the duration of  
8 the record being shared.

9 (c) Nothing in subdivision (b) limits section 775 or Penal Code sections 186.34 and 186.35.

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

12  
13 **§ 771.5. The Committee's Access to Shared Gang Database Systems.**

14 The Committee shall not have access to or discuss individual records contained in a shared gang  
15 database during its open or closed sessions. However, a Committee member may access or  
16 discuss records outside of the meetings provided such access is permitted by law.

17  
18 Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

19  
20 **Article 4. Training, Exam, and Requirements to be an Instructor.**

21 **§ 772. User Training.**

22 (a) Access to a shared gang database system shall only be allowed to individuals who have  
23 been properly trained on the use of that system and the related policies and procedures.

24 (b) Training shall only be conducted by an approved instructor. Requirements to become an  
25 approved instructor are set forth in section 773 of these regulations.

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

27 (1) Definition of a street gang, gang member, and associate.

28 (2) Accepted gang member and associate criteria.

29 (3) Definition and explanation of criminal predicate and reasonable suspicion.

1 (4) Local, state and federal statutes and policies regarding criminal intelligence  
2 information.

3 (5) Physical, technical security and data dissemination.

4 (6) Practical, hands-on system usage.

5 (7) Best practices for gathering criminal intelligence.

6 (8) Notification and removal guidelines in accordance with Articles 6 and 7.

7 (9) Any policies, procedures, guidelines pertinent to the specific database being accessed.

8 (10) Consequences of system misuse and unauthorized use of data.

9 (d) Additional training may be added by the training instructor or system administrator.

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

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13 **§ 772.5. Initial Exam Information and Recertification Exam.**

14 (a) Once instruction is completed, all users shall be tested on the curriculum described in  
15 subdivision (c) of section 772 in a manner prescribed by the training instructor or the system  
16 administrator providing the training.

17 (b) Every 24 months after the date of certification or recertification, all users shall take and  
18 pass a recertification exam.

19 (c) If a user fails to pass the exam, the user's access shall be revoked. The user shall contact  
20 the training instructor or system administrator to complete a refresher training.

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

23  
24 **§773. Requirements to Become an Approved Instructor.**

25 Approved instructors shall be graduates of training outlined in subdivision (c) of section 772 and  
26 shall be tested in system use proficiency. Instructors shall take an approved "Train the Trainer"  
27 course of instruction that will provide an in-depth familiarization with all system applications,  
28 intelligence file guideline requirements, proper use and any additional administrative  
29 requirements.

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

2  
3 **Article 5. Designation Criteria**

4 **§ 773.5. Designation Criteria for an Individual to be Classified as a “Gang Member” or**  
5 **“Gang Associate.”**

6 (a) An individual may be entered into a shared gang database and designated as a “gang  
7 member” or “gang associate” when at least two of the unique criteria listed below, coupled with  
8 the officer’s reasonable suspicion, are found to exist through investigation. The designation shall  
9 be supported by source documents. The unique criteria are:

10 (1) Subject has admitted to being a gang member;

11 (2) Subject has been arrested for offenses consistent with gang activity;

12 (3) Subject has been identified as a gang member by a reliable informant or source;

13 (4) Subject has been arrested with or seen associating with documented gang members;

14 (5) Subject has been seen displaying gang symbols and/or hand signs;

15 (6) Subject has been seen frequenting gang areas (must document specific location);

16 (7) Subject has been seen wearing a gang style of dress (must document specific items);

17 and

18 (8) Subject has gang tattoos.

19 (b) The unique criteria requirement for initial entry may be satisfied by contacts made between  
20 law enforcement and the individual on separate occasions upon which the individual may be  
21 designated as a “gang member” or “gang associate” and entered into a shared gang database.

22 (c) Any subsequent entries into the database require only one unique criterion to be met.. If the  
23 initial entry was purged out of the database, an individual shall only be entered into the database  
24 if at least two of the unique criteria in subdivision (a) are met.

25 (d) A tattoo located in the same place on an individual’s body that is the exact same tattoo used  
26 previously to satisfy the “gang tattoo” criterion during a contact shall not be used as a criterion  
27 twice unless the tattoo tied to that criterion has been purged from the CalGang database.

28 (e) If an individual has multiple tattoos that are the same or similar, and each one of those  
29 tattoos is on a different location on the individual’s body, each tattoo may be used to satisfy the

1 “gang tattoo” criterion multiple times during one contact. However, each one of those tattoos  
2 shall only be documented to meet the “gang tattoo” criterion once each, and cannot be re-entered  
3 into the database as a criterion on subsequent contacts, unless the tattoo tied to that criterion has  
4 been purged from the CalGang database

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

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8 **§ 774. Designation Criteria for an Organization to be Classified as a “Criminal Street**  
9 **Gang”**

10 An organization shall only be designated as a criminal street gang and entered into the database  
11 if it meets the definition provided in subdivision (a) of Penal Code section 186.34. Thus, it shall  
12 not be entered into the database as an organization if it does not have at least three members.

13  
14 Note: Authority cited: Section 186.36, Penal Code. Reference: Section 186.36, Penal Code.

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16 **Article 6. Notification of Inclusion in Shared Gang Database**

17 **§ 774.5. Notifying an Individual of Inclusion in a Shared Gang Database.**

18 Any notice under subdivision (c) of Penal Code section 186.34, may, at the discretion of the  
19 agency delivering the notice, be delivered in person at the time of contact, or to the mailing  
20 address provided by the individual at the time of contact or, if such an address is unavailable at  
21 the time of contact, notice can be provided to an address determined during the course of an  
22 investigation. In addition to the requirements set forth under subdivision (c) of Penal Code  
23 section 186.34, a written notice required thereunder shall clearly indicate:

24 (a) Whether the person is designated as a member, associate, or affiliate.

25 (b) The name of the gang the individual is connected to in the database, if any.

26 (c) The basis for the designation.

27 (d) One or more outreach and intervention services, as appropriate.

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

3  
4 **Article 7. Information Requests**

5 **§ 775. Information Requests.**

6 (a) The Department authorizes each agency to develop a verification of identity form that the  
7 agency may use to determine whether the information request is made by an authorized person.

8 (b) If an agency chooses to develop a verification of identity form, the form may seek  
9 information verifying the requesting person's name, address, date of birth, driver license number,  
10 state identification number, or state bar number. The agency shall not have the authority to  
11 request a copy of a birth certificate or a proof of citizenship document to satisfy its written  
12 verification of identity requirement.

13 (c) An agency's response to an information request pursuant to subdivision (d) of Penal Code  
14 section 186.34 shall include:

15 (1) Verification that the request was received and the date of its receipt.

16 (2) Whether the person is designated as a gang member or associate.

17 (3) The name of the gang the individual is connected to in the database.

18 (4) The basis for the designation.

19 (5) A reference to Penal Code section 186.35 as regarding the person's right to petition  
20 the court to review the designation.

21 (6) One or more outreach and intervention services, as appropriate.

22 (c) If responding to an information request that would compromise an active investigation or  
23 the health and safety of a minor, the receiving agency shall respond with the following  
24 information:

25 (1) Verification that the request was received and the date of its receipt.

26 (2) One or more outreach and intervention services, if available.

27  
28 Note: Authority cited: Section 186.36 of the Penal Code. Reference: Sections 186.34, and  
29 186.36, Penal Code.

1 **§ 775.5. Retention Period for Information Requests and Responses.**

2 (a) An agency shall maintain copies of all information requests and responses for the length of  
3 time that an individual’s record is housed in the shared gang database or for [five or three  
4 years], whichever is longer.

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6 Note: Authority cited: Section 186.36 of the Penal Code. Reference: Sections 186.34, and  
7 186.36, Penal Code.

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9 **Article 8. Retention Periods, Purging, and Source Documents.**

10 **§ 776. Duration of the Retention Period for an Individual.**

11 (a) An individual’s record shall be retained in a shared gang database for up to five OR three  
12 years. The database shall automatically purge the record once the retention date has expired.

13 (b) Anytime an additional criterion is added to an individual’s existing record in the database,  
14 the retention date will reset. Thus, the individual’s record shall not be automatically purged until  
15 three years OR five years have elapsed from the date the last criterion was added to the  
16 individual’s record.

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

18  
19 **§ 776.5. Retention Period for Unsubstantiated Records.**

20 The system administrator shall conduct annual audits to determine whether an organization  
21 designated as a criminal street gang meets the criteria described in subdivision (a) of this section.  
22 A record of a criminal street gang that does not satisfy the threshold of having three or more  
23 members shall be purged within 30 days upon completion of the audit.

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

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1 **§ 777. Source Documents.**

2 (a) An agency that enters any information into a shared gang database shall maintain all source  
3 documents to show that there is adequate support for each entry. The source documents shall be  
4 retained for the same duration as the record they support.

5 (b) At any time the source documents are found to be missing or incomplete to adequately  
6 support a criterion, the agency shall remove the unsupported criterion.

7 (1) Removal shall be conducted within 30 days from the date the agency discovered that  
8 the source documents were lacking or inappropriate.

9 (2) If a record in the database contains both adequate and inadequate source documents,  
10 the record shall remain in the database, on the basis of the adequate source documents if  
11 there is enough information present to satisfy the unique criteria requirement pursuant to  
12 section 773.5 of these regulations.

13 (c) Each agency shall establish a process to audit the source documents that the agency relied  
14 upon to either create a new record or to add additional criteria to an individual's record in the  
15 shared gang database.

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

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18 **Article 9. Mandatory Review Criteria**

19 **§ 777.5. Mandatory Review Criteria.**

20 (a) Prior to any entry into any database, all gang intelligence data shall be reviewed by the  
21 appropriate supervisory classification pertinent to the organizational structure of the agency. The  
22 review shall determine that the gang intelligence data was not obtained in violation of any  
23 applicable Federal, State or local law, policy or ordinance.

24 (b) At its discretion, an agency that entered a specific record and/or criteria may manually  
25 delete an individual's entire record and/or criteria if:

26 (1) During self-auditing the agency finds that the supporting documents are missing or  
27 incomplete;

28 (2) The agency finds that the record is not in compliance with Article 8 of these  
29 regulations; or

1       (3) The agency can show other good cause for its removal. In order to remove a record  
2       and/or criteria under this subdivision, the agency shall contact the system administrator for  
3       approval.

4       (c) If the subject record to be deleted has additional contacts and reports from other agencies,  
5       the deleting agency shall send a written authorization to the agency that originally designated the  
6       subject in the system. The written authorization shall convey the deleting agency's intent to  
7       delete the individual's record.

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

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11       **Article 10. Information Sharing, Disclosures, and Shared Gang Database Integrity.**

12       **§ 778. Information Sharing and Disclosures.**

13       (a) Gang database records are not intended to be relied upon to form an opinion of gang  
14       membership or substitute actual expertise regarding criminal street gangs. Records shall not be  
15       attached to, or referenced, in any report, with the exception of statistical reports pursuant to  
16       subdivision (f). When a reference is necessary, such documents shall only reflect that the  
17       information was obtained from a law enforcement source.

18       (b) Release of criminal intelligence information is on a right-to-know and need-to-know basis  
19       only. Nothing in this subdivision limits section 775 or Penal Code sections 186.34 and 186.35.

20       (c) Records contained in a database shall not be disclosed for employment or military  
21       screening purposes.

22       (d) Records contained in a database shall not be disclosed for purposes of enforcing federal  
23       immigration law, unless required by state or federal statute or regulation.

24       (e) Users of a database are not prohibited or restricted from sending to, or receiving from,  
25       federal immigration authorities, information regarding the citizenship or immigration status,  
26       lawful or unlawful, of an individual or from requesting from federal immigration authorities  
27       information regarding a person's immigration status, maintaining such information, or  
28       exchanging such information with any other federal, state, or local government entity, pursuant  
29       to Sections 1373 and 1644 of Title 8 of the United States Code.

1 (f) All requests for statistics shall be in writing and may be released with approval, through an  
2 approval process deemed appropriate by the system administrator(s) of the shared gang database  
3 from which the information is being requested.

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

6  
7 **Article 11. Equipment Security and Missing Equipment Notification**

8 **§ 778.5. Equipment Security and Missing Equipment Notification.**

9 (a) Measures shall be taken to place terminals and equipment that transmit or receive database  
10 information in an area with physical security to provide protection from theft, damage,  
11 vandalism, or sabotage, and preclude access to confidential information by unauthorized  
12 personnel. This includes protection from unauthorized viewing of any information displayed on  
13 the actual terminals/devices or manually stored/printed data at all times.

14 (b) Agencies shall notify the system administrator in writing within one business day of any  
15 missing equipment that could potentially compromise the confidentiality of the shared gang  
16 database.

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