

UPDATED INFORMATIVE DIGEST

Effect of the Proposed Rulemaking:

On May 10, 2019 the Department of Justice (Department) published the Notice of Proposed Rulemaking Action which included an Informative Digest. Following the Notice of Proposed Rulemaking Action, the regulations text was modified on July 31, 2019, again on December 31, 2019, again on May 20, 2020, and once more on July 28, 2020. The purpose of each article has changed as follows:

Article 1 specifies the title and scope of this chapter, which is to govern the policies and procedures of shared gang databases; provide law enforcement agencies with an accurate, timely, and electronic statewide database of gang-related intelligence information; and direct the User to the User Agency who supplied the information. This article was amended to clarify the authorized uses of the database.

Article 2 was amended to merge the definitions of Gang Member and Gang Associate, and to further clarify other definitions.

Article 3 specifies the process and requirements for accessing a shared gang database. It specifies the responsibilities of the Department, User Agencies, and the System Administrator, and the process by which a Non-User may request access through a proxy query. This article was amended to clarify the requirements for access by out-of-state and federal law enforcement agencies, and for access by Non-Users through proxy queries.

Article 4 relates to User training. It requires Users to take a certification exam prior to utilizing a shared gang database and a periodic recertification exam. It also specifies the requirements for becoming a certified shared gang database instructor. This article was amended to require a recertification exam every 12 months and to clarify training requirements. This article was also amended to clarify the instructor certification process and require instructors to be subject to recertification training every two years.

Article 5 specifies the standards and criteria for entry into a shared gang database as a Gang Member or Associate, including the minimum age of entry. It also specifies how additional information may be added to a person's record in a shared gang database and the requirements for the supervisory review of intelligence data. This article was amended to clarify the standards and criteria for entry into a shared gang database and to clarify the supervisory review process. This article was also amended to clarify that contacts, incidents, or supporting documents that occurred before a juvenile turned 13 years of age shall not be used to designate a juvenile as a Gang Member or Associate as they would fall outside of the minimum age for entry. Furthermore, this article was amended to require the first-level supervisor, or gang-unit lieutenant or equivalent to complete a written attestation that the entry complies with these regulations at the conclusion of the supervisory review and add a notation in the shared gang database confirming that the attestation was completed.

Article 6 specifies the standards and criteria for entry into a shared gang database as a criminal street gang. It also specifies how additional information may be added to a designated criminal street gang in a shared gang database and the requirements for the supervisory review of criminal street gang intelligence data. This information regarding the standards and criteria for entry into a shared gang database as a criminal street gang was previously captured in Article 5 but has been moved to its own article. The process for deleting unsupported records that was previously captured in Article 6 was moved to Article 10 as it pertained to self-auditing. Furthermore, this article was amended to require the first-level supervisor, or gang-unit lieutenant or equivalent to complete a written attestation that the entry complies with these regulations at the conclusion of the supervisory review and add a notation in the shared gang database confirming that the attestation was completed.

Article 7 specifies the means by which a person may be notified of his or her inclusion in a shared gang database. This article was amended to clarify the components that must or may be included in the notification.

Article 8 relates to information requests and requests for removal from a shared gang database. This article was amended to clarify the requirements for sending a notice of inclusion and responding to a request for information or a request for removal regarding an individual's designation in a shared gang database, as well as the components that must be included in an agency's response. This article was also amended to require additional information to be released about source documents in a notice of inclusion and a response to an information request.

Article 9 establishes retention periods for shared gang database records, notices of inclusion, information requests and responses, and source documents. This article was amended to change the retention period for juvenile records and add a retention period for written attestations.

In addition to the purpose outlined in the Notice of Proposed Rulemaking Action, Article 10 specifies that agencies that audit their own records must report the results to the Department and that a User Agency must engage with other User Agencies that have entered additional information related to a record or entry to be deleted prior to deleting it. The process for deleting unsupported records that was previously captured in Article 6 was moved to Article 10 as it pertained to self-auditing. This article was amended to clarify auditing requirements. This article was also amended to establish that the Department may require a User Agency to review any or all of its entries in a shared gang database and provide a written attestation. Furthermore, this article was amended to require an annual written attestation from the head of a User Agency.

Article 11 specifies restrictions for the sharing of information contained in a shared gang database. This article was amended to address the use of shared gang database information for research purposes.

Article 12 relates to equipment security. The information regarding system misuse was moved to Article 13.

Article 13 specifies the different types of system misuse, the investigation and reporting requirements for violations of these regulations, and the means by which these regulations shall be enforced. The system misuse investigation and reporting requirements were previously captured in Article 5 but have been added to Article 13. It also specifies the actions that shall be taken by the Department and/or System Administrator against a User and/or User Agency who violates any statute or regulation governing the shared gang databases and the factors that shall be considered by the Department when determining which actions will be taken.

Applicable Laws:

There have been no changes in applicable laws from those laws described in the Notice of Proposed Rulemaking Action.