



HB-230 Texas Gang Database Transparency and Accountability Act **Points of Interest**

2023 88th Texas Legislative Session

Texas Code of Criminal Procedure, Chapter 67 – “Compilation of Information Pertaining to Combinations and Criminal Street Gangs,” specifically problematic:

- **Submission Criteria:** This provision unconstitutionally allows law enforcement to label someone a member of a “criminal street gang” based on hearsay, tattoos, and/or Facebook posts ***without regard to whether law enforcement has any information to base a reasonable belief the person is involved in criminal activity.***
- **Right to Request Existence of Criminal Information:** This provision is at issue because being labeled a member of a criminal street gang affects Texan’s Second Amendment protected right to bear arms. One cannot carry a handgun in his vehicle if he has been labeled a gang member in TXGANG. To strip someone of that substantive liberty interest, ***law enforcement should first have to notify the person that he is being input into TXGANG and give the person an opportunity to challenge the designation.*** The current version of the statute does not require law enforcement to notify people when they are input into TXGANG
- **Right to Request Review of Criminal Information:** This provision is a constitutionally ***deficient method to challenge one’s inclusion into TXGANG, which does not satisfy the Constitutional right to Due Process.***
- **Judicial Review:** This provision is a constitutionally ***deficient method to challenge one’s inclusion into TXGANG, which does not satisfy the Constitutional right to Due Process, because it does not require the Rules of Evidence to apply to an evidentiary hearing,*** wherein the parties have the right to present evidence, cross-examine witnesses, with the right to discovery



Examples of Rights affected by being labeled a member of a “criminal street gang”:

- A judge can order probationers to not associate with those labeled as members of a criminal street gang
- A judge can order a probationer that was input into the TXGANG as a member of a criminal street gang to submit to electronic monitoring as a condition of probation because of that designation
- A person labeled as a member of a criminal street gang may not avail themselves of the defense of consent for a mutual combat situation (i.e. fist fight)
- A person labeled as a member of a **criminal street gang cannot carry a handgun in their motor vehicle in Texas** (read with the Second Amendment to the United States Constitution)

Sole purpose of this amendment

- Strengthen submission criterion and remove hearsay potential
- Notify someone if they are included in TXGANG
- Provide sufficient time to challenge the designation
- Make fees associated with the challenge affordable. Current cost is approximately a \$400 filing fee and lawyer bills.
- Provide a clear-cut path to challenge the designation
- Allow the accused and their lawyer to see the evidence used to input them in the database under Texas’ disclosure laws. Currently this is not the case.
- Clarify expectations related to records improperly used to input suspect in the gang database.



Audit of the TXGANG Database of those in the database for 10 years or longer

- “The State Auditor’s Office conducted the probe and released its findings in August. The audit identified more than 5,000 records that were uploaded without the required information and over 1,000 that weren’t validated within the last five years – a federal requirement.”
- “A person can get a record in TxGANG without an arrest. Each law enforcement agency is responsible for validating its own TxGANG records, and individuals can have more than one TxGANG record, according to the audit.”
- “Auditors discovered more than 15,000 records that were at least a decade old in February. More than 6,800 of those – or 44% – were not validated within the last five years or didn’t contain all the information needed to determine if they had been validated as required by federal regulations, according to the audit.”
- “The audit specifically identified flaws in the process of uploading information by “batch.” Unlike individually uploaded records, which had complete information, auditors found records sent to the database in batches lacked important information. “
- “Federal rules also require law enforcement agencies to document the date they review a record, the name of the reviewer and an explanation or conclusion for the decision to retain a record. TxGANG policies, however, don’t require a validation date or the name of the person doing the review. Without that information, auditors said they couldn’t determine if more than 5,700 records were validated in time.”

<https://sao.texas.gov/SAOReports/ReportNumber?id=22-039>

<https://www.kxan.com/investigations/audit-tx-gang-database-flawed-thousands-of-records-miss-validation/>

<https://www.kxan.com/investigations/bill-filed-to-reform-texas-gang-database/>

<https://localtoday.news/tx/audit-tx-gang-database-corrupted-thousands-of-records-are-not-validated-38285.html>