# Package 2

California Code of Regulations
Title 11. Law
Division 1. Attorney General

Chapter 20. Fair and Accurate Gang Database Act of 2017 Regulations

## Article 1. Scope
§ 999.230

(a) This Chapter shall be known as the "Department of Justice Regulations for Shared Gang Databases" and is referred to as these regulations.

(b) These regulations establish guidelines, procedures, and standards under the Fair and Accurate Gang Database Act of 2017.

(c) These regulations may not be construed to….

(d) These regulations do not address….

Authority: Section 186.36(k) of the Penal Code. Reference: Section…

## Article 2. Definitions
§ 999.231

(a) Defined terms under Penal Code section 186.34(a) have the same meaning in this chapter as in 186.34(a).

(b) "Database" as used in these regulations refers to any shared gang database, including the CalGang database.

(c) "Access" is the ability to view, query, add, or retrieve records in a shared gang database.

(d) "Right to know" is [the basis on which an inquirer has the legal authority to inquire and receive or otherwise obtain intelligence information]. (NtK and RtK taken from 28 CFR training). OR [the right to obtain criminal intelligence information pursuant to court order, statute or law].

(e) "Need to know" is [the basis on which an inquirer needs to know the information as part of his or her job responsibility.] OR [the necessity to obtain criminal intelligence information to execute official responsibilities (modified from CLETS P&P)].

(f) "Criminal Predicate" is established when information exists 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 an individual or organization is involved in a definable criminal activity.

(g) "Reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect criminal activity.

(h) "Intelligence" is the gathering, analysis, storage/maintenance, and sharing of information about persons and organizations in support of legitimate policy objectives (taken from model standards.)

(i) "System misuse" is an unauthorized access into a shared gang database.

(j) "System administrator" as used in these regulations refers to a person with administrative oversight of a shared gang database.

(k) "Unique" means different from other criteria listed.

(l) A "reliable informant/source" may be, but is not limited to, a law enforcement officer, family member, friend, neighbor, associate, or fellow gang member.

(m) For purposes of this article, "Contacts" are any interaction between an individual and a peace officer.

(n) "Criminal justice agency" is herein used as defined in Penal Code 13101.

(o) "DOJ" is the California Department of Justice or any of its employees or contractors acting under the authority of the Department of Justice.


Authority: Section 186.36(k) of the Penal Code. Reference: Section 186.36(k)(6)



**Article 3. Access**
§ 999.232

(a) Access to databases shall be limited to those persons listed in penal code section 186.36 (k)(6).

(b) Without limiting subdivision (a) in this section, information from a database may be released only to persons demonstrating a right to know and need to know. The releasing agency must record what information was released, when, to whom and why. Said information shall be kept for the duration that the record(s) is retained within the database.

(c) Nothing in subdivision (b) limits section 999.239 or Penal Code sections 186.34, subdivision (c), or 186.5.

(d) The Gang Database Technical Advisory Committee herein referred to as "the Committee" shall not discuss or access individual records contained in a database during open or closed sessions.

(e) Section (d) does not prevent a member of the Committee from accessing or discussing records outside of the meetings as permitted by law.

Authority: Section 186.36(k) of the Penal Code. Reference: Section…

**Article 4. User Training**
§ 999.233

(a) Only those individuals who have been properly trained on the use of their respective database and related policies and procedures will be allowed access.

(b) Instruction from an approved trainer will address, at a minimum, the following:
   a. Definition of a street gang, gang member, and associate
   b. Accepted gang member and associate criteria
   c. Definition and explanation of criminal predicate and reasonable suspicion
   d. Local, state and federal statues and policies regarding criminal intelligence information
   e. Physical, technical security and data dissemination
   f. Practical, hands-on system usage
   g. Best practices for gathering criminal intelligence during field interviews
   h. Notification and removal guidelines in accordance with articles 8 and 9
   i. Any policies, procedures, guidelines pertinent to the specific database being accessed
   j. Consequences of system misuse and data breaches

(c) Following instruction, all users must be tested on the curriculum described in section (b) in a manner prescribed by the system administrator or agency providing the training.

(d) Every 24 months, all users shall take a recertification exam. If users fail to pass the exam, access shall be revoked until they complete a refresher training.

(e) Approved instructors shall be graduates of training outlined in section (b), with several hours of system user experience verified by a system administrator. Instructors shall take an approved "Train the Trainer" course of instruction providing an in-depth familiarization with all system applications, intelligence file guideline requirements, proper use and any additional administrative requirements.

Authority: Section 186.36(k) of the Penal Code. Reference: Section…

## Article 5. Designation Criteria and Retention Periods for an Individual
§ 999.234

(a) An individual may be entered into a shared gang database and designated as a "gang member" or "gang associate" when at least two of the unique criteria listed below are found based on reasonable suspicion of criminal activity, or conviction and must be supported by source documentation:
1. Subject has admitted to being a gang member
2. Subject has been arrested for offenses consistent with gang activity
3. Subject has been identified as a gang member by a reliable informant or source
4. Subject has been arrested with or seen associating with documented gang members
5. Subject has been seen displaying gang symbols and/or hand signs
6. Subject has been seen frequenting gang areas (must document specific location)
7. Subject has been seen wearing a gang style of dress (must document specific items)
8. Subject has gang tattoos

(b) Two or more unique criteria may be established from contacts with an individual on multiple occasions. When a single criterion is established on one contact and previous contacts have established different criteria, an individual may be designated as a "gang member" or "gang associate" in a shared gang database. All criteria noted on source documents shall be entered into the database.

(c) Once an individual has been designated in a database under subdivision (b) and their record has not purged out of the database, additional criterion may be entered for the individual as justified.

(d) As used in this chapter, "offenses consistent with gang activity" [are those listed identified in penal code 186.22 (e)] OR [are those committed in support of, for the benefit of, or in association with a criminal street gang or its members.]

(e) The same tattoo located in the same place on an individual may only be entered as a criterion once.


Authority: Section 186.36(k) & (*l*) of the Penal Code. Reference: Section…

## § 999.235

(a) A given record may be retained for up to [five (5)] OR [three (3)] years, after which time the record will be purged.

(b) When additional criteria is added into the record of an individual already listed in the database, such entries reset the [five] OR [three] year retention period of that record.


Authority: Section 186.36(k) & (*l*) of the Penal Code. Reference: Section…

## Article 6. Designation Criteria and Retention Periods for an Organization
§ 999.236

(a) For purposes of inclusion in a database, an organization shall only be designated as a criminal street gang if it meets the definition provided in 186.34(a) of the Penal Code and must have three or more members in the database.

(b) An organization designated as a criminal street gang shall be audited annually to determine if they meet the criteria described in paragraph (a). Criminal street gangs without three or more members will be purged within 30 days of the audit.


Authority: Section 186.36(a) of the Penal Code. Reference: Section…


## Article 7. Source Documentation
§ 999.237

(a) Agencies entering information into databases shall maintain all source documentation, which adequately supports each entry, for the duration that an individual has a record in the database.

(b) If at any time source documentation is found to be lacking or inappropriate, agencies shall remove all associated criteria within 30 days. If the individual's record has remaining supported criteria within the retention period in § 999.235(a), then the record shall remain in the database.

(c) All databases shall have a process for audit and inspection of backup documentation supporting participating agency submissions to the database.


Authority: Section 186.36(k) of the Penal Code. Reference: Section…


## Article 8. Notification of Inclusion in Shared Gang Database
§ 999.238

(a) If notice is required under Penal Code section 186.34, subdivision (c) such notice shall be provided in person at the time of the prompting contact, when feasible. Alternatively, agencies may also provide such notice to the mailing address provided by the individual at the time of contact or, if unavailable, an address determined during the course of an investigation.

(b) The notice described in Penal Code section 186.34, subdivision (c) shall include:
   a. Whether the person is designated as a member, associate, or affiliate
   b. The name of the gang the individual is connected to in the database, if any
   c. The basis for the designation

    d.   How to file an appeal of the designation
    e.   One or more outreach and intervention services, if available


Authority: Section 186.34 of the Penal Code. Reference: Section (c)




## Article 9. Information Requests and Requests or Petitions for Removal
§ 999.239

(a) A law enforcement agency may require reasonable written verification of the identity of the person making the request and the relationship between the parent or guardian of the child, if applicable.  Reasonable written verification of identity can include written verification of an address, date of birth, driver's license number, state identification card number, state bar number.

(b) Responses to information requests described in Penal Code section 186.34, subdivision (d) shall include:
    a.   Verification that the request was received and the date received
    b.   Whether the person is designated as a member, associate, or affiliate
    c.   The name of the gang the individual is connected to in the database
    d.   The basis for the designation
    e.   How to file an appeal of the designation
    f.   One or more outreach and intervention services, if available

(c) If responding to an information request would compromise an active investigation or the health and safety of a minor the receiving law enforcement agency shall respond with the following information:
    a.   Verification that the request was received and the date received
    b.   One or more outreach and intervention services, if available

(d) Copies of all information requests, petitions for removal, and responses shall be maintained for the duration that an individual's record is housed in the database or [5 OR 3] years, whichever is longer.


Authority: Section 186.36 of the Penal Code. Reference: Section (d)




## Article 10. Mandatory Review Criteria
§ 999.240

(a) All criminal intelligence data shall be reviewed by the commanding officer, or supervisor, prior to entry into any database. The commanding officer, or supervisor, shall determine that the criminal intelligence data conforms to Article 8 and was not obtained in violation of any applicable Federal, State or local law, policy or ordinance. (Taken from model standards)

(d) Agencies may manually delete an individual's entire record and/or criteria that they entered at their discretion. If the subject record to be deleted has additional contacts and reports from other Agencies, the Agency that originally designated the subject in the system shall receive written authorization from any other Agency that has contacts or reports with the individual to delete the individual's records.

Authority: Section 186.36 of the Penal Code. Reference: Section…

**Article 11. Information Sharing and Disclosures**
§ 999.241

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

(b) Release of criminal intelligence information is on a Right-to-Know and Need-to-Know basis only. Nothing in this subdivision (b) limits section 999.239 or Penal Code sections 186.34 subdivision (c), or 186.5.

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

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

(e) Users of a database 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 an individual 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.

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

Authority: Section 186.36 of the Penal Code. Reference: Section…

## Article 12. Shared Gang Database System Integrity
§ 999.242

(a) Each law enforcement and criminal justice agency using the database is required to:

1. Identify at least one system administrator that is responsible for ensuring agency compliance with policies established for the use of any database;

2. Ensure that all users of a database receive training on the use of the database before granting users access to a database;

3. Sign an agreement to certify its commitment to compliance with 28 CFR Part 23 standards, the California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities, and system requirements with regard to criminal intelligence submitted to or received from the criminal intelligence system.

Authority: Section 186.36 of the Penal Code. Reference: Section…

## Article 13. Equipment Security and Missing Equipment Notification
§ 999.243

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

(b) Law enforcement agencies and criminal justice agencies shall notify the DOJ of any missing equipment that could potentially compromise a database within 1 business day.

Authority: Section 186.36 of the Penal Code. Reference: Section…