

GANG DATABASE TECHNICAL ADVISORY COMMITTEE

MEETING MINUTES

September 19, 2018, 9:30 AM

Handlery Hotel San Diego
950 Hotel Circle North
San Diego, CA 92108

California Department of Justice Staff Present: Kelli Evans, Jenny Reich, Arwen Flint, Shayna Rivera, Thomas Bierfreund, Shanae Kidd, Sandra Thurston, Emer McKenna, Jaimie Tackett, Sundeep Thind, Trini Hurtado

1. Call to Order and Welcoming Remarks

Chairperson Nunez called the meeting to order at 9:32 AM. The agenda will cover:

- Roll Call of Advisory Members
- Approval of June 18, 2018 Meeting Minutes
- Meeting Overview and Regulations Timelines – Shayna Riviera & Ms. Thind, DOJ
- Use of CalGang During Criminal Investigations (Presentation given by LAPD and SJPD)
- Public Comment Period #1 Regarding Agenda item 7
- Discussion and Voting on Regulation Package #1 Topics
- Public Comment Period #2 Regarding Agenda item 9
- Discussion and Drafting of Package #2
- Public Comment Period #3 Regarding Matters Not on The Agenda
- Closing Remarks and Adjourn

2. Roll Call of Advisory Members

Members Present: Sammy Nunez, Wes McBride, Eric McBride (representing Chief Burguan), Jonathan Feldman (representing Chief Burguan, replacing Eric McBride in the afternoon) Fernando Huerta (Designee from AG), Marissa Montes, Martin Vranicar, Ryan Cooper, Jeremy Thornton, Jim Considine, Michael Scafiddi

Members Not Present: Aaron Harvey

3. Approval of (June 18, 2018) Meeting Minutes

- Mrs. Rivera, DOJ: I have an adjustment to propose. In the first package, pertaining to training, we talked about implicit bias training. There was a vote; the vote was against adding implicit bias training. In the minutes currently, it reflects that it was tabled. That is inaccurate. The vote was against implicit bias training.

MOTION: Member Scafiddi motioned to approve the change. Member Huerta seconded the motion. No objections were raised.

APPROVAL: The minutes were approved with all members voting “Yes.” There were no “No” votes, and no abstentions.

4. Meeting Overview and Regulations Timelines – Shayna Riviera & Ms. Thind, DOJ

Meeting overview:

- Mrs. Riviera discussed the agenda and the new structure of the comment periods.

Regulations Timelines:

- Ms. Thind, provided a handout and gave a brief presentation on the timelines associated with the APA process for regulations.

5. Use of CalGang During Criminal Investigations (Committee Members and public may ask questions)

Law Enforcement Officers from Los Angeles and San Jose Police Departments provided a brief presentation regarding how CalGang is used in criminal investigations.

- Member Montes: If Sgt. Alfonzo (San Jose PD) could repeat the part about the phone number? You were speaking a bit fast?
- Sgt. Alfonzo: This particular gang wrote a fake name and put three numbers that matched up with the three letters of the gang. My investigator recognized that. They put a fake number; they did it to show their gang.
- Member Montes: I thought you stated the phone number was indicative of gang membership?
- Sgt. Alfonzo: No, the three numbers matched up and we recognized that.
- Member Montes: The phone number wasn't used on CalGang to search the person, it was the surveillance video that showed the tattoo, right?
- Sgt. Alfonzo: That number led to the gang and we pulled that gang up. The surveillance video matched up with a guy in there. Luckily, the officer took photos.
- Member Montes: I just wanted to make sure I understood how it was connected. Can I ask Detective Frus some questions? Thank you so much for your presentation because I know that I am someone that has wanted clarity as to how CalGang works. I guess this is a question for both of you. As law enforcement, the thing you mostly use it for then is identification, correct? Identification and enhancement?
- Detective Frus (LAPD): No, again it is a pointer system like my slideshow showed. In this case, which is pretty indicative of other cases, all you have is a tattoo and he said where he's from, that's indicative of a gang crime. We run the tattoo, boom, there is a possible. Then inside CalGang you may have a CII or a Driver License number. You pull it up; you make a photographic lineup and show it to the victim. So all it is, is a pointer system to a possible suspect.
- Member Montes: But it assists you in identifying a suspect?
- Detective Frus: That is not the only thing the database is used for.
- Member Montes: I want to understand the main purposes of how it helps law enforcement.
- Detective Frus: Yes, it helps us in identifying possible suspects.
- Member Montes: And then you mentioned providing documentation for an enhancement, correct?
- Detective Frus: Yes.

- Member Montes: When you provide that information, you don't actually say this individual is listed on CalGang? You just provide the source documentation that proves that they are a gang member or gang associate?
- Detective Frus: What can happen, we provide the source document, like the FIs. A defense attorney can ask if we accessed CalGang. I would invoke 1040 of the evidence code. Meaning that is privileged information. It doesn't need to be put out there. The judge can decide whether he wants to see this. More often than not, and in every case that I had, I'm not saying it hasn't happened. I'm sure detective Cooper, I'm sure the sergeant has had cases where the judge has said let me see the printout. We bring the printout in and I don't think I've ever heard of a case where the judge has entered the CalGang printout into evidence. What we are relying on is the source documents. The FI's, the arrest reports, there's a variety of other things that we base our expertise on.
- Member Montes: So what you guys rely on to get the enhancement is not CalGang itself; It is the source documentation that you have that makes you guys believe this individual is a gang member or gang associate, correct?
- Sgt. Alfonzo: It is our opinion; again it is not proven until the judge makes the decision.
- Detective Frus: 100 percent it is the source documentation.
- Member Montes: OK. That's helpful.
- Eric McBride: I'm going to ask a question to help clear it up. CalGang is just a shareable intelligence database and to be placed into CalGang you have to be designated by a law enforcement officer; either a gang member or a potential associate based on the criteria?
- Detective Frus: Correct.
- Eric McBride: From that, it is a searchable database that you can search by many different criteria whether it be tattoos, monikers or physical descriptors. It helps identify potential suspects in a particular area.
- Sgt. Alfonzo: In a criminal investigation.
- Eric McBride: And from that, CalGang is never used a sole determiner in court on whether someone is a gang member. You have to provide an expert witness, or a gang supplement based on your expertise, if this individual is a gang member and then potentially testify in court to the fact that this individual is a gang member. That is not based on CalGang; it is based on your expertise.
- Sgt. Alfonzo: I think it is semantics, if someone is in CalGang that doesn't mean they are a gang member. That's not what we are saying. We're merely saying they fit two requirements that point to that source documents to go to court later in front of a judge or jury and decide if they believe that person is a gang member. CalGang does not say someone is a gang member, nor do we give legal opinions.
- Member Huerta: Just to verify, once you provide the source documents, say a FI for example, the judge can ultimately request the officer who actually did the interview in a 1040 motion. So he gets the first hand information from the officers who are actually in the field. He's not taking your word for it.
- Sgt. Alfonzo: We can't base it off what is in the database.
- Member Huerta: Correct. Now he's varying the veracity of information that's provided, so it's not yours. It could be rather the officers who were there on the field that night who obtained the information.

- Sgt. Alfonzo: Every officer comes in and we talk about what happened and we, as gang detectives, watch their testimony. We can't base it off what is in the database or there.
- Member Huerta: Correct. So we're still verifying the veracity of the information that was received first hand.
- Member Scafiddi: If I may, I have a question for both of you. Ryan, if you want to jump in too. You just talked about the Sanchez case, that's a relatively recent case. Before that, gang experts relied on pure hearsay information as part of a basis for their opinion, true?
- Sgt. Alfonzo: Yes.
- Member Scafiddi: Sanchez basically changed that recently. So now the person who does the FI, the actual officer that did it, now have to come in and be subject to cross-examination under the 6th amendment. That's new, true?
- Detective Frus: I am sorry to interrupt, however, for officers that are working with gang intel like detective Cooper and the sergeant, more often than not I am testifying off my own experiences. Source documents help, but more often than not, I've had more contact with that particular gang member and that particular gang that I am working than any patrol officer or any detective.
- Member Scafiddi: And that's fine. You are subject to cross-examination, which is what due process is all about. One of my questions and concerns is this. You mentioned field interview cards and that information will be filled out by a patrol officer or deputy sheriff somewhere in the county or municipal area. And you are relying upon that information that it is true and correct. That the person being interviewed by the detective or patrol deputy is being accurately put on the FI card to go in the gang database system, true?
- Detective Frus: Yes, I'd say that is half true because I don't know any gang officer that would walk into court and make an expert opinion on one FI.
- Member Scafiddi: Let's say two or three FI's. That was just a foundational portion of my question. My question is this, is there any process being used, LAPD or any of the nodes throughout the state if you know, to check to see if the original officer or officers that filled out FI cards were later listed as a Brady officer? Subject to serious violations and now Brady cops as we call them, pursuant to Brady V. Maryland. Is there any way you guys check on that, to see if the officer who put the original information has since been accused or found guilty of serious misconduct? Whether or not it is falsifying police reports, planting evidence, things like that. Is there a way to go back and see if that officer who did report is still in good standing?
- Sgt. Alfonzo: We have body cameras that we can review, every time someone contacts someone it is on video. So we can look back and hear what that person has said.
- Member Scafiddi: Do you do that on every on every occasion? Is there a body cam attached to every FI card, that's my question?
- Sgt. Alfonzo: Since the PD has gotten body cameras, every time the officer goes out and makes contact, the body camera is on. Prior to that, no.
- Member Scafiddi: And you would agree that's a good practice because now you actually have the person saying it, you can not only hear the words with your ears, and you can see it with your eyes, true?
- Sgt. Alfonzo: It's actually the practice my officers use. To do that. You might even get more out of it. Maybe the officer doesn't have enough experience hearing everything the person is saying.
- Member Scafiddi: I agree, so you would say that it's a best practice?

- Sgt. Alfonzo: Yes.
- Member Scafiddi: Do you know how many agencies in California do that same type of best practice that you all do at San Jose PD?
- Sgt. Alfonzo: I don't.
- Member Scafiddi stated he had no further questions
- Member Thornton: Those are two examples of the detective and sergeant solving crime, but patrol officers also have access to the CalGang database?
- Detective Frus: Yes.
- Sgt. Alfonzo: We do training around three times a year. When they go through training they have to take a test. There are procedures you have to stay up to date with. It's not like anybody can have access to it.
- Member Thornton: On a pedestrian stop for instance, officers pull up and want to ask some questions, its consensual, the officer will be able to run that person's name into the CalGang database to see if they are in the CalGang database. If that person has the required permissions.
- Sgt. Alfonzo: Yes.
- Member Thornton: Is that subject to individual department oversight, where you encourage police officers to do it?
- Detective Frus: I don't know of any agency that encourages people to use CalGang. It's just a tool, that's all it is." We don't tell officers "hey when you do this, access CalGang." It is simply an investigative tool.
- Member Thornton: As you both have pointed out, you talk about misperceptions and you want to clear up what CalGang does. I think it's important that you talk about these examples because everyone wants violent criminals to be taken off the street. But another issue is, and I'm not saying it is wrong to do, when police officers make a pedestrian stop and it is consensual and everything is fine, they run someone in the CalGang database and see they have gang contacts, they may conclude this person is a documented gang member, having had no contact with them. And rightfully, maybe they get a little more quick to see crime where crime hasn't happened. That is the perception of what the public has with CalGang, right?
- Detective Frus: If I am on a consensual encounter and I stop someone from the Black Widow gang for instance. I will ask him if I can talk to him, so we go back and forth. Do you mind if I get your information? He says sure. Now if I run him and find out he is in CalGang, it still doesn't pass up reasonable suspicion and probable cause, which changes nothing. All it is doing is saying this guy may or may not be a gang member. We still need to have standard proof with reasonable suspicion and probable cause. I hope every officer knows that and I have yet to hear of an example where CalGang has been used for the purpose.
- Sgt. Alfonzo: It is more of an investigative tool for the officers. You don't have officers stopping people and running people through CalGang. It is just not a common practice. That contact stands alone. We might run them later. It is rare in my experience, that someone is stopped and they are in CalGang so they are treated differently.
- Member Thornton: Is there data on the number of times patrol officers are accessing the CalGang database? Is that something that might exist? Is that something being looked at?
- Member Cooper: Everything is tracked, but you wouldn't be to see that patrol officers access the database 20 percent of the time compared to detectives. As an administrator, you can look and see everything.

- Member Thornton: But realistically?
- Member Cooper: Realistically, it is mainly detectives and gang officers that are entering info. Patrol has the right to, they can see it but they cannot input anything.
- Chairperson Nunez: In the event, we hear a lot about injunctions and gang sweeps, you said this is a pointer system. Is that used to determine who gets caught up in those sweeps?
- Detective Frus: Frankly, I'm not sure which sweeps you are speaking of?
- Chairperson Nunez: When there are parole sweeps or gang sweeps they happen frequently.
- Detective Frus: We go through parole and probation if we're going to do parole and probation compliance checks we contact parole or probation. We don't just cast a net that is not how it works. If I have a shooting that is going on between the East Coast Crips and Pirus, then I will identify the people on probation, whether that is running their criminal history going through parole or probation. Parole and probation provides us a list of the information we give them. And we specifically target gang members that have a propensity for violence, propensity for weapons violations, but we wouldn't look at a guy who is on probation for curfew and go hit his house.
- Sgt. Alfonzo: I think with the pointer system there may be some confusion. It is a pointer system pointing to the source document, not to a person we want to get.
- Chairperson Nunez: I would like to know the totality and how this is used and leveraged.
- Detective Frus stated, "And with the example we gave, it is based solely off of a criminal investigation and more often than not is based off of a crime report.
- Eric McBride: I want to give you an example, we can query the DMV database. Say there was a crime that had been committed. Someone stated it was a blue sedan with the last two numbers of 63. We can query the DMV database of all vehicles that match that description in the region. That gives you a list of potential suspects, no less than what CalGang does. It gives you a list of people with potential tattoos that match a descriptor. It doesn't say any one of those persons is a suspect, but it helps you as an investigative tool to identify people that may be the suspect.
- Sgt. Alfonzo: We can call any local agency in the county and say "Hey I'm looking for these matches." We can do it quickly and hopefully save people.
- Detective Frus: It can often exonerate people. If one person comes up in CalGang with the same tattoo. We get the photo and ask, "Do you see the person who committed the crime?" "No." So it can help us exonerate as much as it can help us make an arrest.
- Chairperson Nunez: Thank you so much. We still have time for public comment."
- (Didn't say her name): With respect to the first example that you gave in searching the database for the individual with the tattoo description, would you have searched for that description if they hadn't mentioned, specifically asking if someone was in a gang or asking where they are from?
- Detective Frus: No this is just the down and dirty example. More often than not you're going to have "where are you from?" It could be a tattoo that is indicative of that gang; it could be that gang's area. More often than not, it is not just a statement. In my 23 years I've never had somebody that wasn't a gang member walk up to someone and say where are you from? So, that's definitely an indicator, but not the sole indicator.
- Melanie Ochoa, ACLU: I meant more of the opposite. If they didn't say anything, but the victim noticed that there was a tattoo would you just search the database?

- Detective Frus: I can't speak on other agencies, but for LAPD we have gang detectives that handle strictly gang arrests and gang investigations. For example, if there was a robbery, if all they have is a tattoo, then it will go to robbery. They will do an investigation in a different way. They may access CalGang, but they may not.
- Sgt. Alfonzo: Unless it is a tattoo that we know is indicative of gang membership.
- Sean Garcia-Leys, Urban Peace Institute: So, could you talk about what databases you can use if you did not use CalGang? For example, I've done some inquiry requests for CalGang files and what have been returned to me are records from different sources. One of them was the California Regional Identification System. That was a computer system that tracked the tattoos of people, as they've been booked. LAPD also has a system called the Palantir System that can also be used as an investigative tool. What is out there besides CalGang that does some of the same things?
- Detective Frus: As far as criminal gang intelligence, CalGang. I can use DMV, there are a variety of things, but the only gang database that I know of is CalGang.
- Member Montes: This question is for Jeremy and Michael as criminal defense attorneys. How do you guys see CalGang played out in the courtroom? Is it only the source documentation that comes in?
- Member Thornton: At this point at preliminary hearings it is testimony. It is not the source documentation coming in. In trial, it is the police officer coming in, that's generally the rule. The reason I ask about the patrol officers is not so much the gang enhancements although those are certainly very important, but it is the consensual encounters that turns into "he was making certain gestures, then he tensed up when I went to write." All of a sudden you have resisting an executive officer with force, but really it started as a consensual encounter, and then I noticed he was a gang member right away. This is what I find to be the most devastating for trust in the criminal justice system and trust in police officers. Then you have everybody watching. He was just walking down the street, why did it go like that?
- Detective Frus: Within LAPD, I'm not saying I've read every single crime report or arrest report. But I've never heard of anyone doing a detention based on forward moment.
- Sgt. Alfonzo: We're not going to stop someone and then run them in CalGang. That's on the investigative side.
- Member Thornton: It sounds like it is a great tool for detectives to use in investigations. That can't be disputed. Have there been discussions about limiting patrol officers access to it? Do you see a need to have access while on patrol?
- Member Considine: Patrol does investigations too. There still a cop.
- Sgt. Alfonzo: They don't use it as much. They use it a lot less.
- Member Cooper: Detectives aren't always working. It might be three in the morning and you've got a shooting. And you get a description of the tattoo or the vehicle and you want to try and figure out who this person is before another shooting happens. Patrol is the only one working."
- Jonathan Feldman (California Police Chiefs Association): My comments and questions are directed to member Scafiddi. Your question was about the integrity of the officers entering information into the system.
- Member Scafiddi: No, my question was the integrity of the officer putting information onto the FI card.

- Jonathan Feldman: So the integrity of the officers and framing if they are misleading or misrepresenting. There are pretty extensive rules around officers framing, misrepresenting, dishonesty. To the second point about body cams, yes that might be best practice, but body cams are extremely expensive and we have small departments that are much smaller than LAPD and San Jose PD. These are two of the largest departments in the state. We have departments that have five sworn officers, tiny budgets. They don't have the bandwidth to collect that information, store it. As you talked about best practices, it might be best practice for an agency that can handle something like that, but it is not realistic statewide. Unless you want the state to fund body cams for every single agency, but that's billions of dollars.
- Member Scaffiddi: I don't think its billions of dollars. I haven't seen a study that has said billions of dollars. As for the two cases that were presented by our officers today, that represents really good police work. My comment to you, I believe like any profession that police officers, lawyers, doctors are inherently honest people. Once in a while things happen in people's lives where either, they are mistaken and they do things wrong. It's not an indictment for police officers in general. I have great respect for the men and women that serve. Police officers have a job where it's not a stagnant thing, its fluid. You see good people at their bad moments and you see bad people at good moments and sometimes it is hard to tell the difference. I think body cams are the answer and I look forward to the future where every police officer has a body cam at all times. Let's say if the body cam was not working that a jury can disregard the testimony of the person who was supposed to have it on. That's what I would like to see in the future, so we all know what really happened.
- Jonathan Feldman: Honesty is a primary factor that they expect out of every single one of their officers." If there is an officer that is proven to be dishonest, they're not doing these types of investigations. They are rules and laws about that.
- Kimmy Gill, Youth Justice Coalition: Can you explain who has access to CalGang? Is it all sworn personnel, all sworn civilian personnel? Is it different from department to department? What is the difference between people who have access and people who are authorized users? Can you explain the training people go through and if it is standard across the state? Would it better to have only one shared gang database for the entire state, CalGang?
- Detective Frus: This misnomer that there were a bunch of mistakes - With the audit we were 99 percent accurate." Those mistakes did not happen.
- Sgt. Alfonzo: This is why we have the audit. In the San Jose node, I am responsible for 11 different agencies. They come to me for audits and best practices. Were constantly trying to keep everyone on the same page. With the best practices.
- Kimmy Gill: Would it be better to have one shared database only?
- Detective Frus: We only have one.
- Kimmy Gill: There's nothing to preclude other shared gang databases. There's nothing stopping agencies from creating their gang database that is shared. For example, the example that Sean brought up. Would it be better to have CalGang as the only shared gang database.
- Mrs. Reich: CalGang is the only gang intelligence database in the State of California. The other databases that Sean is talking about are other intelligence databases that are not specific to just gang individuals.
- Kimmy Gill: But they have gang information. Would it be better to have just one database? They have gang information even though they might not be labeled a gang database

- Larry Mead, LA County Sheriff: If I am doing an investigation, and I check DMV that has no gang information. CalGang is the only shared gang database in the state of California.
- Chairperson Nunez states, “So this is something that is driven by the legislation itself, AB90 or future legislation? Seems to me like it would be wise to apply these regulations as were going through this process, and not have to revisit this anytime in the future.”

6. Public Comment Period #1 Regarding Agenda item 7 (capped at 20 minutes)

*Comments may only address periodic audits and standardized periodic training for everyone with access to CalGang. (Article 4 and Section 757.5 in Package 1.)

Periodic Audits:

- *Aaron Burgess, COPE:* This doesn’t have to do directly with the audit, but we will share our concern anyway.
- Chairperson Nunez: You may have to wait for the general comment portion.
- Sean Garcia-Leys: My comment regards package 1 entirely. It has been repeated that CalGang is the only criminal intelligence shared gang database in California; it seems to me unnecessary to have a package 1 and package 2. The advisory committee should recommend that there be one package that says what the rules will be for CalGang, and CalGang shall be the only shared gang database. Thank you.
- Chairperson Nunez: I would be remise if I did not mention that one of our committee members, Aaron Harvey was going to present on his experience with the database. Unfortunately, he is unable to make it today. We will actually table this presentation for the next meeting if he can make it.

7. Break

The committee took a break at 10:36 AM and reconvened at 10:58 AM.

8. Discussion and Voting on Regulation Package #1 Topics

The committee began reviewing comments made on Package 1.

Package 1:

Referencing member Montes’s comment - Section 772(c)(7):

- Member Montes: Before we start, can we talk about consolidating both packages? It seems like CalGang is the only shared gang database in California, correct? It would make sense to consolidate for efficiency purposes and to decide that CalGang will be the only shared gang database in California.
- Mrs. Reich: We think it would be overreaching because the legislation specifically lays out that we have to have certain regulations for CalGang and regulations for any shared gang database so we are doing two packages.
- Member Montes: I just want to make sure the public understands. Due to the legislation, we are required to do two.

- Ms. Thind: It looks like we will be looking at training first; in package two section 772(c)(7). One of the committee members commented on best practices for gathering criminal intelligence, and they wanted to add on including trauma informed practices, mitigation of racial and implicit biases, and cross-cultural competency.
- Member Montes: This was a comment that I made and I know we talked about implicit bias. This is something as an attorney and someone who does community based lawyering; I find it to be important. When it comes to practices of criminal intelligence, we should also include trauma informed practices, mitigation of racial bias and cross-cultural competency. I also think this addresses not only the community concerns but also the committee concerns of law enforcement making contact with individuals.
- Member Vranicar: I thought we voted on this issue before.
- Chairperson Nunez: How was this different from what we already voted on?
- Member Montes: I can't remember the language and what it was we actually voted on.
- Member Scaffiddi: I agree with Martin's comment. We did vote on similar type language, but it was relative to training the data entry people. What separates this one here is this is the best practices for gathering information. It is going under a different section or area to be discussed.
- Member Vranicar: I'm not sure what is meant by trauma informed practices.
- Chairperson Nunez: Trauma informed practices refers to a set of principles that lay out how to mitigate or reduce trauma among people that have been exposed to different stressors. I think trauma informed care in policing is not a new concept.
- Member Montes: I can provide some context and give you an example. My clients are individuals who live in low income and have been subject to violence due to being members of that community by law enforcement. So understanding how law enforcement interaction can be intimidating and re-traumatize the individual you are interacting with.
- Member Cooper: I don't see where best practices for gathering intelligence apply to any of that. It was basically what we voted on the last meeting. Gathering criminal intelligence is how to do a good FI card.
- Member Montes: To counter that, when you fill out a FI card, it is actually through a contact that you have with the individual, correct? So you're actually making contact in order to fill it out.
- Member Cooper: The intelligence you are gathering; you're looking for tattoos, for stuff like that.
- Member Montes: But also, when it comes to things like self-identification. That requires an individual to state they're a member of a gang. So it requires interaction and there are also community concerns on why individuals might be intimidated by law enforcement to provide such information or might want to falsify that information. Adding trauma informed practices can be helpful and not only just for law enforcement, but also build trust in the community.
- Member Thornton: It seems like this would be a training to increase the effectiveness of the contacts, to allow for a more fluid conversation between the individual and law enforcement officer. I think these are valid principals that we are becoming more cognizant through various studies and in the criminal justice system. I have to take training on implicit bias all the time, and I'm a public defender. I don't see how it can decrease the integrity of the information or lead to something that is not going to be fruitful.

- Member McBride: I don't know of a department that doesn't have that training already. POST requires so much stuff be trained on. We'll be training 364 days a year if we continue with this. They go to bias training, they know how to fill out FI cards. Supervisors review those FI cards before they are entered into CalGang. I believe it will be a detriment to the entire police operation if you had to send officers to do more training. LAPD has 9,000 officers; you'd have to run them all through just for this. They know how to fill out FI's. There are already regulations in place if you falsify documents. I don't see a use for this.
- Chairperson Nunez: How difficult would it be to add on a component of trauma informed approaches? Not only does it benefit the public, I agree it can build my trust in law enforcement in the community. It also helps the police officer as well. To help mitigate the actual trauma of heated exchanges that can escalate. I think it would be smart to consider this training as part of the training we're doing anyway.
- Member Scaffiddi: Wes makes a good point. Is this going to be a new and separate training? How do we get everyone trained? As our chairperson is saying, it could simply be incorporated into the existing training first at the academy level. POST does have their academy that talks about inherent biases and it can be done as officers are trained with their FTO'S. Multiple organizations have the ability to work with officers, specifically those working in the gang area. I think there is a component that already exists with the academy, but we can add this one modality using specifically those exact words- trauma enforced practices and you can equate it to actual contact with people who are in the inner city areas that have high level crime, high gang activity just to make officers more aware. I do not think we have to spend millions of dollars for additional training, I believe it is an added component of existing training.
- Chairperson Nunez: I believe there are actually community groups that can assist with the training. This is not a new concept; I know there are many agencies that are incorporating this. As someone who has been in the gang database, there is a broader impact. I think it is important to recognize trauma and the triggers associated with it. It can make a simple exchange much more egregious. I think it can only benefit us in the end.

MOTION: Member Montes motioned to adopt best practices for gathering criminal intelligence to include: Trauma-informed practices, mitigation of racial and implicit biases, and cross-cultural competency. The motion was seconded by member Scaffiddi.

NOT APPROVED: Members Nunez, and Thornton also voted yes. Members Cooper, McBride (representing Jarrod Burgan), Considine, Huerta, McBride and Vranicar all opposed. There were no abstentions.

MEMBERS NOT PRESENT: Aaron Harvey and Jarrod Burguan

Referencing member Montes's comment - Section 772(c)(New):

- Member Montes: There has been discussion on how we should base some of the criteria and regulations on empirical research, so I think it is important that law enforcement receive training on this. It is important for law enforcement to understand how gang allegations and gang designations, through a database, can cause other consequences outside that from just a criminal investigation.

- Member Scaffiddi: I need more information. I am confused on how this would work. I would reference though sergeant Alfonzo from San Jose PD who gave his presentation on the great investigation they did, where he made the comment “just because someone is in the gang database doesn’t mean they are a gang member.” That spoke volumes to me and I think that may directly relate to what you are proposing in 7. I just want to know how that could be accomplished.
- Member Montes: Are you asking what the training would look like or what the purpose of it would be? We know that being included in the database is not determinative that you are actually a gang member or gang associate. Nonetheless, we are using certain criteria to make that determination. I understand that part of it is law enforcement’s expertise and how they identify individuals as gang members, but also empirical research- who are titled as gang members due to gang involvement, length of person’s involvement and also misidentification was added for me because the point of this database is not to be indicative of gang membership, but if it gets into the wrong hands it can be used and cause greater consequences by trying to name that person as a gang member as it does in immigration proceedings [SIC].
- Chairperson Nunez: I think it is important to use research and track trends over a period of time, to make informed decisions.
- Member Vranicar: I believe we had a discussion at the last meeting; one of the researchers that DOJ hired to look at the universe of empirical research and I don’t recall from that discussion that there was definitive research that was out there. This would be instruction from an improved instructor, where would that information come from? Does the local department have to hire a researcher? I am concerned about in terms of training someone who is going to use this system, how is this going to work out.
- Member Montes: There is actually a lot of empirical research available. A simple search can bring up multiple articles. I think this is important when we are discussing length of time of involvement and when gang tattoos are used to identify individuals as active gang members. It can be a gang tattoo that is four years old and is no longer indicative of gang membership. I think it is helpful for law enforcement to have this type of background knowledge when they come into contact with individuals or make these assessments.
- Chairperson Nunez: This will be added as another component of the training, correct
- Member Montes: Correct
- Member McBride: This would require the CalGang instructor to be aware of all the empirical research and comment on it? I have reservations on that. I don’t know how one person, an instructor that has daily obligations, is going to know all of that empirical information or agree with it. Just because it is an empirical study, doesn’t make it right. The instructors only have so many hours to training users on CalGang. I think that is over stretching for the instructors.
- Member Cooper: One of the problems I see with this suggestion is, the gangs in LA are different than the gangs we have in northern California. It varies across the nation. I can’t tell you across the board, 2/3 of females only last a year in a gang. That’s just not accurate.
- Member Montes: With all due respect, I believe that is your own subjective view and the point of having empirical research is to also provide objective information on the average. You have your own gang expertise, but even for myself as an immigration law expert, it’s nice to have objective research presented when it comes to issues like this. Especially when it impacts the community.

MOTION: Member Montes motioned to adopt empirical research on gangs and gang involvement. Including typical length of a person's involvement and potential causes of misidentification. Member Thornton seconded the motion.

NOT APPROVED: Member Scaffiddi and Nunez also voted yes. Members Cooper, McBride, Considine, Huerta, McBride (representing Jarrod Burguan) and Vranicar all opposed. There were no abstentions.

Referencing member Montes's comments - Section 772(c)(10):

- Ms. Thind: Member Montes wanted to take out consequences of system misuse and unauthorized use of data and replace it with the possible immigration, employment, housing, criminal, military, public benefit, and other consequences of false identification, incorrect information, or system misuse. We can of course take out words if we don't agree with all of them.
- Member Montes: Most of this was changing the wording for specificity.
- Member Cooper: It is already stated that the system is not to be used for employment or housing.
- Eric McBride: Wouldn't it be better to be general than specific?
- Mrs. Rivera: Not for the regulations, it would be better to be specific. To just say the training shall mention these things.
- Ms. Thind: This is different than what we mentioned because system misuse is CalGang misuse. Unauthorized use of data is very vague so Marisa added housing, military, public benefit and other consequences of false identification. That is new language with different connotations.
- Member Montes: Housing, military, and public benefit were added based on concerns that were brought up by community members and where they believe CalGang has actually made an impact.
- Member Thornton: One of the issues here, when it comes to misidentification, it's true that the CalGang database is just pointing to documents. When a district attorney talks to a judge and says were going to add a gang enhancement if they don't plead guilty now, or there's a gang enhancement added because of these documents we've looked at. If he pleads today, he has to admit the gang enhancement or we are going to strike the punishment - So the client does it. Years later, the court system is going to point to the fact the client admitted to being in this gang in this other case, so it's going to carry these ramifications. The misuse can have consequences with the criminal justice system that may be unjust at their inception. I don't see how it could hurt to train on these types of things and be more specific. The inception of gang enhancements and labels within the criminal justice system are FIs. Sometimes they are accurate and sometimes they aren't. Training is only going to increase the awareness of this. It has disastrous consequences when done incorrectly.
- Chairperson Nunez: I have seen it happen in housing authority. Law enforcement testimony is weighted heavily and it can get a family evicted if a family member is labeled as a gang member.
- Member Thornton: The reality of the criminal justice system is that it's a system based on plea-bargaining. People admit to something they did not do. Sometimes they admit participation of a gang that they are not a part of. When there is an appearance of evidence that this person is in it, but it is not accurate, it can really cause problems. Gang enhancements can add 10 years or

make it life; These are serious enhancements that can take away years on someone's life. We need to be sure.

- Member Considine: Wouldn't it be better to say just do your best job to be accurate?
- Member Thornton: I think in the regulations you want it to be as specific as possible. I think it's better when you're teaching someone –don't misuse it because it could be bad, but these are the kinds of situations where it can be bad.
- Chairperson Nunez: This has actually happened; where people are labeled as gang members and it has effected them in these areas?
- Member Considine: That's not true. Name one instance where it has been used for employment.
- Eric McBride: CalGang has never been used for housing. It is not disclosed. It goes back to the individual officer's expertise. Which goes back way before they ever make contact with somebody to fill out an FI card to have them entered into CalGang. So what you're talking about is stuff that goes into training for officers on how to identify gang members, but not how to enter something into CalGang. The database is never mentioned in court. It is the individual officer that testifies to the person being a gang member. They don't reference CalGang.
- Member McBride: When you run a record, at the very top it states, not to be used for employment purposes.
- Member Thornton: That's great and the training can encompass why. I think it only educates the officer more. I think it is inaccurate to say CalGang does not come up in court. It doesn't come up on the record, but prosecutors are more than willing to tell the judge in chambers, that someone is in the database. It is very prevalent in the criminal justice system, but I'm not saying that's wrong. To highlight the consequences of misuse can only result in greater integrity of the system. That is our general role here.
- Member Montes: I understand law enforcement's point that you don't see these misuses. But community members have been coming up to me and providing me with these examples and it is a concern. In order to have trust in the system and better trust in law enforcement, we also have to address community concerns. We can't dismiss them because law enforcement can't account for the misuses.
- Member Scaffiddi: In that way, the language is just an addition of. I do not understand how it could hurt to put that language in. It is just a qualifying language to training.
- Chairperson Nunez: This is suggested language and it can be tweaked once again.
- Member Montes: What is it from law enforcement that you would want from this, if it were to be amended?
- Member Considine: They are talking about the court process. That has nothing to do with CalGang. You think the guy entering the card has anything to do with that process? They have nothing to do with it.
- Member Montes: They don't have any direct involvement in the process, let say immigration, but the consequences of misusing the system or inaccurately placing can cause greater immigration consequences for example.
- Member Cooper: Then the officer is held responsible.

9. LUNCH BREAK

The committee recessed at 11:44 AM and reconvened at 12:20 PM

- Chairperson Nunez: We still have some lingering conversation regarding the last item that was presented.
- Member Montes: Perhaps if DOJ can help us craft language that will be both pleasing to us and law enforcement?
- Member Considine: Since we don't know what it would entail, that's what scares us. If the "penalties for using this shall be mentioned. . . Such as" that's something we can do, we can get it out of the way. If you want a 2-hour block on it, that's not something we can do.
- Member Montes: I was suggesting that language for purposes of specificity. You can avoid the training. I'm not an expert when it comes to regulation writing. If DOJ can help us construct language it will serve both purposes and I think that will be helpful.

MOTION: Member Montes motioned to table section 772 (c)(10) and suggests DOJ to draft language and make edits. Member McBride seconded the motion. All members voted yes. There were no abstentions. **The motion carries.**

9. Public Comment Period #2 Regarding Agenda item 9 (Capped at 30 minutes)

* Comments may only address the text in package two. See agenda item 9 for specific sections that the committee will discuss.

Aaron Burgess, COPE: We are a faith-based advocacy group working toward ending mass incarceration and over-criminalization of our youth. Under article 6, notification of inclusion in the CalGang database, subdivision c, penal code section 186.34, we recommend that the required notice shall require additional language that includes and clearly indicates any process and procedure to appeal the inclusion in the gang database. We see this as a step in the right direction towards restorative justice. Thank you for your concern.

Sean Garcia-Leys, Urban Peace Institute: Hello, my name is Sean Garcia-Leys, I am a staff attorney with the Urban Peace Institute. I would like to speak on the criteria that has been proposed and I find printed in the back, I believe this is presented by professor Montes. There are a few things I want to speak about in favor of; The first is the distinction between gang member and associate. An allegation of gang membership, that word membership carries certain meaning and multiple contexts. For example, in prosecutions under 186.22(a), you are only able to be found guilty of that crime if the crime was committed by multiple gang members – 2 or more. So finding of gang membership, in that case, is an element of the crime. Determinations of gang membership or affiliation made by law enforcement officers for the purposes of recording information in the gang database, are typically made using only weak identifiers of gang membership such as tattoos of an indeterminate age, association in public and these frequently are substantial enough to justify an allegation of gang affiliation, but gang membership should require more. Because it is important in court, a determination of gang membership, that label should only be applied when there has been a determination of gang membership in front of a judge or as part of a court proceeding. So, the first thing is restrict gang membership only to people who have had due process in which they have been found to be a gang member. Second, that leaves gang associate. This would be where the sort of thing has been listed as membership before but will still be included. The criteria that currently exist in policy, are lists of the types of things that law enforcement agents do that are convenient for them to create documentation. The criteria are not based on the most

reliable ways of determining whether or not somebody is involved in a gang. For example, the best way to know if someone is in a gang or not, is whether they have been recently jumped into the gang. Their initiation rituals and the fact that gang initiation rituals are not on the criteria shows that the criteria are both over inclusive but also under inclusive. So these criteria are based on the best sorts of information that exist for determining gang affiliation. Now, for each of these to have meaning though, there's going to have to be much more. For example, where can the allegations come from? Currently, the regulations say things like a person has been alleged to be a gang member by a reliable informant. Those sorts of criteria would be better dealt with hearsay rules, then making them their own independent criteria. So, what this does, it focuses the criteria on those things that best indicate gang association and sets aside things like, "well what about an informant?" "Can someone's mom accuse them of gang membership?" What about indeterminate length for tattoos. Those things can all be addressed in other issue, but I think this is a great start for justifying what it is that should be looked at. This is not a list of what sort of documentation would be needed. The final thing I want to point out about this is the concept of replicating or displaying a gang symbol. If that is understood to include things like graffiti and tattoos, I think it can be seen how these criteria better encompass many of the practices that are currently in place for documenting gang members. That's all I have to say about the criteria. Thank you.

Jonathan Feldman: To quickly talk about training; I think it is important for members of this committee to understand that POST, the agency that is responsible for training all law enforcement, offers 960 plus courses on every type of issue from procedural justice to implicit bias, police legitimacy – all the types of things you guys have been talking about and saying, these are great ideas we already are doing. We also have the racial and identity profiling board that is also responsible for developing more racial and implicit bias training, and they are doing their job. So I commend you all for bringing it to this discussion, it is a part of many discussions I am involved in. We talk about DRE's, drug recognition experts; it's a part of that discussion. We talk about marijuana enforcement; it's a part of that discussion too. It's tough when we are having all these separate conversations about it, but it is already being handled. I just want you to know. Maybe it will be good to do a presentation so you people understand which type of training is being offered, because it was discussed at the last hearing and it was discussed again today. I feel like it wasn't resolved today, so maybe more information will help enlighten you guys on what is being done now. As far as some of the definitions in package 2, gang associate we feel is too narrow. It requires someone to have actually done activity to benefit the gang; that sounds more like a gang member. That should instead focus on identifying individuals that affiliate with gang members on a periodic or regular basis. That's what we see as an affiliate (associate). Reliable informant or source should focus on the evidence being produced, not who is producing it. In defining contact, it can't just be a physical contact. We know the gangs are using Facebook and other social media platforms to transfer information because that information is encrypted, law enforcement can't always get to it. So, we're doing a lot of investigations online and we should be able to use the stuff we develop through those investigations. If we find someone that meets the criteria through a social media platform, we should be able to use that in CalGang as well. This is the first that we saw the big package of amendments to the criteria, a lot of that is concerning; you can't enter anyone that is under 16 years old. Gangs use 14 and 15 year olds all the time because they know they are less likely to get full penalties. So, that is concerning. Some of the things that were left out of the criteria are also concerning. The fact that self-admission is a secondary criteria is concerning. That's going to take a lot of time for us to look at and dive into, but I can tell you right now, we would oppose those types of criteria if they were entered into the proposed regulations ultimately. Thank you.

Kelly Evans, Special Assistant to Attorney General: Wanted to thank all of us for coming. She briefly explained the rule making process. She stated she was proud of the work we have been doing and hoped we can reach a sweet spot in the work we were trying to do together.

10. Discussion and Drafting of Package #2

Referencing Section 775.5(a):

- Member Considine: I recommend they stay consistent with CalGang, the 5 year time limit; which 28CFR spells out pretty well.
- Member Nunez: I would push for neither. I would push for 2, based on empirical research that shows the average length of membership is 2 years. I'm sorry I am looking at the wrong one.
- Member Cooper: I believe we should be able to keep those records indefinitely.
- Member Vranicar: My comment was 5 years or until purged. If the individual is purged, I think whatever the information request was, goes with it.
- Member Cooper: If there is a lawsuit, we can prove yes we served the guy and yes we did respond to him. It can't hurt for law enforcement to keep them. It is not intelligence.
- Eric McBride: Correct me if I am wrong, but the public records act allows public records to be destroyed after 5 years. Something routine like that, a request for information would fall under that. I would say indefinitely.
- Member Scafiddi: I just have one comment in regards to the comment made by member Cooper in regards to lawsuits. Statute of limitations for most civil actions in California is 2 years. There would be no reason to go past that. Maybe if someone was included at 16, they have 2 years after they turn of age, which would get them until 20. I don't know if that is a significant issue because of the statute of limitations in our state as to civil litigation.

MOTION: Member Vranicar motioned to adopt new language - five years or until the record is purged. Member Considine seconded the motion.

APPROVED: Members Cooper, Thornton, McBride, Nunez, Huerta and McBride (representing Jarrod Burgan) voted yes. There were no "no" votes. Members Scafiddi and Montes abstained. The motion carries.

Referencing Section 776(a):

- Ms. Thind: This is just how long the record shall remain in CalGang.
- Member Thornton: I would like to discuss. I think the literature as Marisa was talking about earlier is generally two years is what it supports. I would make a motion to limit it to two years; understanding it can reset when a new contact is made.
- Member Vranicar: I believe this discussion with respect to the retention period should be tabled until we can have a discussion regarding criteria. Ultimately the criteria may impact the information or how long an individual should be retained in CalGang.
- Chairperson Nunez: So the recommendation would be to table it until after get into the criteria. Or if someone wants to second Jeremy's motion.
- Member Scafiddi: Would we come back to this today?
- Mrs. Rivera: There's no guarantee.

- Member Montes: I agree with Jeremy. I believe that a retention of someone in the database should only be for two years because that's what empirical data backs up. But I also want to have the conversation; let's say a source document is no longer valid, then that person should be purged at the time of invalidity of the documentation.

MOTION: Member Vranicar motioned to table the duration of retention period for an individual. Member Scafiddi seconded the motion. All members present voted yes.

Referencing member Montes's Comments – Section 777(new)

- Ms. Thind: Pursuant to Marisa's recommendation. She wanted to insert a section that states, the database shall automatically purge an individual's record when the criteria described in subdivision (b) of section 773.5 of these regulations is no longer satisfied by valid source documentation.
- Member Montes: That was tabled; It basically said what I mentioned earlier.
- Member Vranicar: Isn't that covered by subdivision o on page two? Purge means the elimination through destruction of contents that may exist in either hard copy or soft copy forms or both – of the record from a shared gang database when it no longer is in compliance with Article 8 of these regulations.
- Mrs. Rivera: Marisa, does that definition speak to what you were referencing?
- Marisa Montes: I have to check my notes.
- Chairperson Nunez: That was tabled until the criteria was discussed.
- Mrs. Rivera: It was tabled. We will just table it for now.

Referencing Section 770.5(k):

- Ms. Thind: We're going to circle back to definitions, and we're going to start with gang associate. There was just a proposed definition we put in here and this is going to be a discussion point. One of the commenters suggested we should change the definition to: gang associate means an individual who joins a gang member as a partner, friend, companion, confederate, affiliate and/or ally on a regular or periodic basis. It would also include a person with a lesser or lower standing with a criminal street gang. It is open up for discussion.
- Member Vranicar: The definition that was my comment. The first part of the definition comes from Webster's dictionary and the second part is basically the lesser or lower standing with a criminal street gang. Many individuals when they are questioned will often indicate "they just hang with the individual" and say I am not a gang member in an attempt to mitigate what they've been engaged with in terms of the activity.
- Member Thornton: Looking at this definition, you can have a gang member and you can have a gang member's parents, aunts and uncles when they meet at various holidays. That would be a periodic basis. They could conceivably be included into CalGang because they associate on holidays. I think this is extremely broad to include something like this.
- Member Montes: When discussing how to define gang associate it was pretty difficult because there was no actual standard we were able to use within the law to describe what an associate is. I agree with Jeremy, the definition is problematic. I think of my clients to contextualize it. In incidents of clients that have been trafficked by a gang and they aren't actually gang members, but due to their association as being trafficked, their being classified as gang associates or gang

members. I also think of romantic relationships. Majority of my cases involve woman who are intimately involved with someone who is a gang member and due to that relationship, they are then classified as a gang associate.

- Chairperson Nunez: There has been incidents where someone lives in a neighborhood. It is a hotspot neighborhood. They go to the same basketball court, they aren't actually doing anything in support of any gang, but by virtue of living in that neighborhood, they come in close contact with gang members.
- Eric McBride: There's also an analysis that takes place called social network analysis. This is essentially what a gang associate is. It is not identifying someone as a gang member. What its saying is that might be someone is not an active gang member, doesn't participate, and maybe even an older person than the gang members themselves. Maybe they open their house or backyard for them to gather and have meetings. They are associating with them, but ideally it is not a database that identifies people as gang members. It is an intelligence network that allows to identify people that are associates and help us at the end of the day, solve crime. You can't dismiss this. Hanging out with someone is associating with them.
- Chairperson Nunez: You're implying there is criminal activity by being an associate, is that correct? They're actively supporting gang activity?
- Eric McBride: They may not even be aware that criminal activity is happening, but they are opening their house up, providing stuff to people and that is an association. For intelligence gathering purposes, that is necessary for law enforcement to have.
- Member Cooper: Our department definition and what we use is a juvenile or an adult that associates with a gang, but is not a full member. They haven't been jumped on, on the fringe.
- Member McBride: In the argument of the girlfriend, you're saying she is an associate. She lives with him, maybe has kids with him, to me that makes her an associate.
- Member Vranicar: That is why I used the language joins with a gang member, partner, friend, companion, affiliate and/or ally on a regular or periodic basis. I think that shouldn't include someone who shows up at grandma's house or to a party. I absolutely agree, for intelligence purposes, if you are looking for a specific member of a gang, who would he go to for support? It is important to know who those individuals are that hang out with the gang member on a regular or periodic basis.
- Member Thornton: Built into this definition there seems to be a lot of subjectivity. Periodic basis, what is that? Regular basis, what is that? What is a partner, what is a friend? The officer on the street who is taking the FI can't be over trained when it comes to making these types of decisions on identifying a gang associate. I'd like to eliminate the word periodic basis.
- Member Montes: Even though a gang associate doesn't mean they are engaged in criminal activity, when you say gang member or gang anything, you automatically criminalize the individual. A potential misuse, with immigration authorities accessing this information, just labeling someone as a gang associate has major consequences. Does DOJ have a recommendation to come up with a definition?
- Ms. Thind: The recommendation was what we have in the original package. The definition is a vague, working definition. We were hoping we could get advice from the committee.
- Chairperson Nunez: I think there are implications. It seems to me when someone is labeled as a gang associate, there is some implied criminal activity. I think the general public will feel the same way. When you are a gang associate, you're probably doing gang "stuff." Does this

prohibit someone who is a victim themselves from receiving services because they have been labeled a gang associate?

- Member Montes: I actually prefer the definition in the original package.
- Member Vranicar: The problem with that definition is that would meet the definition of active gang member under 186.22(a). Doing something for the benefit of the gang would subject the individual to proof of a gang enhancement. So using that language, “anyone who does anything for the benefit of the gang” is certainly an evidentiary standard. It is certainly different from what you’re doing by entering this individual into an intelligence database.
- Member Scaffidi: Wouldn’t this be cured by using the DOJ recommend “simple” version by saying gang associate means an individual not a gang member who knowingly does anything for the benefit of the gang?
- Member Vranicar: I still have a problem with doing something for the benefit of the gang.
- Member Thornton: What about someone who derives to benefit from the gang? For instance, I hang around the gang, I’m not a member and I haven’t been jumped in. I hang around them because nobody messes with me. Maybe we can define associate in terms of what the person is receiving.
- Member Vranicar: How is an officer who contacts two individuals, one of them is a gang member and one who is not, able to determine whether or not that individual is going to be entered as an associate?
- Member Montes: Would it be possible to say that a gang associate is someone who meets the criteria in section X, Y, Z. Would that be possible or is that too vague?
- Ms. Thind: That is too vague. We need an actual definition.
- Member McBride: Correct me if I am wrong, but I thought an actual associate had to be tied to a specific person, not the gang.
- Chairperson Nunez: Mr. Huerta coaches a football where the individuals may be in a gang, would he be considered a gang associate?
- Eric McBride: Are you hung up on the fact that it says gang associate? Would it be fine to say associate?
- Chairperson Nunez: I am bothered by that. I feel it is casting a wide net.
- Eric McBride: For the purposes of intelligence, say you are mentoring a young person that is a gang member. On Friday you mentor that person, for intelligence purposes it would be important for law enforcement to know that if we are actively looking for that person, it’s likely that they may show up with someone they associate with. That’s not disparaging you, but it gives intelligence to law enforcement or where this person may or may not be.
- Mrs. Flint: I just want to remind the committee about the designation criteria for gang associate – there are criteria that have to be met in order for someone to be determined a gang associate within the database. Beyond the gang associate definition, in order to be a gang associate as determined by the regulations, they still have to meet specific criteria.

MOTION: Member Montes motioned to table the definition of gang associate. Member Huerta seconded the motion. Members Cooper, Thornton, Considine, McBride, Scaffidi and Nunez voted yes. McBride (representing Jarrod Burgan) voted no. Member Vranicar abstained. The motion was tabled.

Referencing section 770.5(n):

- Ms. Thind: Moving onto the next topic, it is another definition. “Offenses consistent with gang activity.” We have defined that to mean those offenses that are listed in subdivision (e) of Penal Code section 186.22. One of the committee members would like to add the language as well as vandalism, graffiti, and nuisance activities.
- Member Cooper: I had something similar, but mine was broader. When we went through the audit, the state auditor had a problem with some people stopped and FI-ed who were harassing people in apartment buildings. They stated that was not a 186 crime or a gang related crime. I don’t want to pin it down to just 186 crimes because there are other crimes that can benefit the gang.
- Member Scafiddi: 186.22 covers more than a handful of crimes. There are 33 sections that are listed. I can see member Cooper’s point about vandalism because misdemeanor vandalism is not covered. That seems to be reasonable and related. I don’t know about nuisance activities, that seems too broad.
- Member Montes: If there are specific crimes that aren’t listed that you’d think would be beneficial to add like human trafficking, I would be open to that.
- Member Cooper: There would be a list if we did that. Must benefit the gang. This crime is causing fear and intimidation in the community.
- Member Thornton: Loitering in a certain area where they are scaring off customers can be a nuisance.
- Member Cooper: I don’t think you can just define it as 86.22. Years ago identity theft wasn’t a gang crime. The gangs started to get into that.
- Member Vranicar: There is great difficulty when it comes to adding crimes to 186.22. We wanted to add hate crimes to the list, but legislature didn’t feel like that fit. Limiting those offenses that are just to what is currently in 186.22 does not encompass the types of gang crimes that should be included.
- Member Montes: I would be open to the expansion if we enumerated the additional crimes. Hate crimes should be included, sex trafficking should be included. Specificity is important.

MOTION: Member Montes motioned to table offenses consistent with gang activity - until enumerated crimes are specified. Member McBride seconded the motion. All members present voted yes. The motion was tabled.

Referencing section 773.5(a)(1):

- Member Montes: Since we all use the term gang member and gang associate, I think it makes sense that it be included. If someone self identifies they can identify as a member or an associate.
- Eric McBride: To be entered as a gang member they should meet two criteria, but for an associate they should meet any one of the criteria.
- Member Considine: If the guy meets the criteria, there’s two of them. We’re not going to make him an associate. So, you’re really hurting the people you’re trying to help. We’re going to make him a member, we’re not going to downgrade him.
- Ms. Thind: Let’s move the discussion back to just this one sentence. Shall we include “or a gang associate” then we can move forward.

MOTION: Member Vranicar motioned to adopt the new language - You can self-admit to being a gang member or an associate. The motion was seconded by member Scaffiddi.

APPROVED: All members present voted yes. Eric McBride was replaced by Jonathan Feldman (Legislative Advocate for California's Police Chiefs Association) who did not vote. Chairperson Nunez abstained.

Referencing Member Montes's comments on criteria:

- Member Montes: My biggest concern and what I want to push for with this database is accuracy and efficiency. It's two-fold. It serves law enforcement's purpose and community as well. The more accurate and the more accurate documentation you submit, it only improves public safety and also improves community trust. I think we need a division in who is an actual gang member and who is an actual associate. Right now as the regulations read, the same type of criteria is used to classify people either way. I am not proposing to get rid of one, but stating there should be different ways to classify each. For someone to be classified as a gang member, it should be someone who has been convicted under the STEP act. Everyone else who hasn't been convicted, can be listed as a gang associate. I think it is important to have this division and I don't believe it hurts law enforcement purposes.
- Member Considine: That's a huge ask. You're making it illegal to be a gang member, right? That would be a felon based database. There's no intelligence whatsoever.
- Member Vranicar: That information will be in CORI. That's already there. For intelligence purposes, there is no use. There are other avenues, if this individual was convicted of a gang crime and he's on probation, they'll do a probation search. They can talk to the probation department or parole.
- Member Montes: But if you are looking for gang members and these individuals have already been convicted of gang crimes. I just don't understand how it is not helpful.
- Member Considine: We're not saying it wouldn't be helpful. If you want to take it another step, say certified gang members and let us do our intelligence stuff.
- Member Montes: I still don't understand how it would not be helpful for intelligence based purposes if you guys are using this as a system to identify people.
- Jonathan Feldman: Sometimes we are investigating before they have been convicted. It is an investigative tool, which comes before conviction. This is completely getting rid of the entire purpose of this, which is an investigative tool.
- Member Montes: I wouldn't want to do that. Those people can then be listed as associates, you would still have them.
- Member Considine: I think we should vote on it right now.
- Jonathan Feldman: I make a motion to reject that provision.
- Member Thornton: I'd like to keep discussing. There is not a motion in the table to eliminate the category of criminal gang associate. I heard a comment earlier that it is essentially the same when you are categorizing gang member and gang associate under the current provisions. This would elevate a member and differentiate it from associate without eliminating associate. It would still be this investigative tool that we heard is an incredible tool earlier, without downgrading what a member is. I don't understand why it would eliminate this investigative aspect of it.

- Member Considine: You can be a gang member and not be convicted of a 186.22.
- Jonathan Feldman: During the investigation we can believe that you are a gang member. We believe you may be committing crimes for the benefit of the gang before you are convicted. And you should be labeled a gang member because that is what you are under investigation for, that's what our evidence is building towards.
- Member Thornton: What is the benefit of the distinction between associate and member?
- Jonathan Feldman: We talked about the definition. We talked about the fact that an associate is someone who's associating with an individual on a regular basis, but not doing something for the benefit of the gang. That's the difference we just talked about.
- Chairperson Nunez: I think categorizing properly, I don't see the harm in that.
- Jonathan Feldman: Well we can take a vote for it right now.
- Member Thornton: I am anxious to learn why making it more difficult to be a gang member and still having the category of associate, which are still in the CalGang database, which are still searchable (SIC). I could be wrong, but the searches that were discussed earlier this morning, that man could have been an associate or a member. It didn't matter, he would have shown up in the CalGang database. Let's say this man was an associate and we had this elevated definition of member, they still would have been able to solve that crime.
- Jonathan Feldman: So the officer that is looking into that file, they don't know if this person is operating for the benefit of the gang or are they just an associate. A distinction need to be made. That distinction isn't have they been convicted of something already, it is the evidence we are building towards. That's why it's important. Again, I will make a motion to reject this right now.
- Member Thornton: Evidence that you are building towards for court? Because earlier I thought it was about investigation? Which I'm with...
- Jonathan Feldman: The officers doing the investigation need to know what they are looking into.
- Member Thornton: Why?
- Member Considine: The associate has to be tied to a gang member or you can't enter him. You're taking the whole puzzle and changing it around for us.
- Member Montes: So you are talking about how the system is built? That's not clear to us.
- Member Considine: You're not in the database. We're working in there and you guys have never even seen it.
- Member Scaffiddi: If I could just make one comment. I don't think anyone is trying to change anything. We are trying to find a balance between effective police investigative tools as well as misclassifying people that have long-term effects. It isn't us against you. I don't think there is anyone in this room that wants anyone to commit serious violent gang crimes. We are just trying to find a balance between public protection and individual rights. This is a very difficult subject area and it deserves this type of public comment. I don't necessarily disagree with everything, but I do disagree with some things. All we are doing is talking about it. You do have a right to request your motion, but that doesn't mean we decide on it right away. We still get to talk about it under to Robert's rules of order. There is no one against anyone here. We are just trying to have a public forum to discuss ways to make our streets safer, but also preserve individual rights. That is what this is about.

- Member Thornton: I have a question. I only see the court's side of things. What is the benefit of knowing whether your suspect is a member or an associate? Why is that important for law enforcement?
- Member Considine: They would be much easier to prosecute. You can't get an enhancement for an associate.
- Jonathan Feldman: If there is an inherent difference. Then it is important to know who you are looking into. If it is just an affiliate, they are not committing the criminal activity. Versus the investigation you are going to do, the information you're going to look for, the questions that you are going to ask if it someone actually committing the crime. Is that not clear?
- Member Thornton: I don't understand. Whether that person is an associate or a gang member in the database. He had the tattoo, they ran his height and weight. They pulled up a six pack and he was identified. There must be something more. If the officer sees he is a gang member and he knows to ask things a certain way, then that's something I don't know.
- Member Cooper: You can see the evolution of somebody. You can have someone who is on the fringe of joining, but he hasn't been jumped in yet. Next thing he is tagging the neighborhood with his gang name. We want to see at what point he is an associate compared to being a full member of this gang. Just because you associate with somebody doesn't mean you're going to be put in here. You still have to meet two of the criteria and be with a gang member.
- Jonathan Feldman: So it is used for more than just solving crimes. It can be used as an intervention tool at some point. You're seeing how someone is evolving through and at some point they become a member.
- Member Cooper: We want to see their evolution.
- Member Montes: I just want to make sure I am clear, detective Cooper. In order to be classified as a gang member you need to have A, been found with somebody and B, fit two different sets of criteria?
- Member Cooper: Correct.
- Member Montes: Right now, as it reads, as long as you meet the two criteria, you can be classified as one or the other. The regulations do not even say what you just mentioned. It's not clear.
- Jonathan Feldman: If we set a definition of associate, then you would have to meet the definition and the two criteria. That would be the distinction that would be drawn.
- Member Montes: I still think it is a little problematic that we are relying in the same set of criteria to classify someone as a gang member and someone as an associate.
- Chairperson Nunez: Maybe I am wrong, but we're talking evidence you are compiling against an individual that you are investigating for criminal conduct. In that process, you present that to a judge to make a determination on guilt or innocence. My feeling on it is it doesn't undermine that process.
- Member Montes: I'm saying that someone who is considered to be a gang member is someone who has been convicted of a gang crime. Someone who is classified as a gang member is someone who has been convicted of a gang crime. There is still the ability to have an associate with criteria and source documentation. Law enforcement is still able to collect that information. From my understanding, it is that source documentation that is then used to prove a gang enhancement. So, then you'd be moving that person from an actual associate to a gang member.

- Jonathan Feldman: So with your definition someone who has been jumped in will still not be a gang member because they haven't been convicted?
- Member Montes: Correct.
- Jonathan Feldman: It is inconsistent with what you have here.
- Member Montes: I am more than happy, if we can't make a decision today, to sit down with law enforcement. I have been working with members of the community, no one from law enforcement has reached out to me as a committee member to discuss their version of criteria. This is based on the work that I have done and working with different community groups.
- Jonathan Feldman: I have had a lot of conversations, with a lot of different community groups about these criteria over the last three years. I know we haven't had a conversation about it. We understand some of these criteria are stronger than others. There are too many limits on what we can and can't include.
- Member Montes: This is something I will be open to, speaking with law enforcement as a committee member. I'm trying to be more of a mediator in a sense. If there is anyone from your organization that would like to speak with me before the regulations are done, I'd be more than happy to do that.
- Chairperson Nunez: That might be a good idea to talk offline, but it can't be a member of the committee. We can't keep kicking the can down the road, we have to make some decisions about these things.
- Member Montes: I know right now it's getting heated. We don't have to make decisions now, but I welcome the actual discussion.
- Jonathan Feldman: I think that is a good idea. It took four months to draft this bill and get the language that we all agreed to because we were able to have those types of conversations. It is doable. Just a question, you said you spoke with community members, who are those members?
- Member Montes: There are different organizations in Los Angeles. MILK, ACLU, UPI, YJC. I have reached out to many. Being the immigration person that I am, with the criteria, I wanted to get community buy in.
- Jonathan Feldman: Those are the same groups we talked to when we drafted the bill.
- Member McBride: We have got to do something. We can't keep tabling everything.
- Chairperson Nunez: There was a request to have a meeting. Do we have a motion?
- Mrs. Flint: I'm not sure we are done with the discussion. We have two hours left to discuss these issues. To table it now would be a disservice. I suggest we follow our agenda. Give ourselves some time to regroup.
- Member Montes: If there was a division, would it require a complete rewrite of the system?
- Mrs. Flint: For CalGang specifically, perhaps. But we can't always think about CalGang specifically while going through this process. If it's such a deviation to what CalGang can do, it will be problematic for the package that overlays CalGang. For the purpose of package two, we should think about it as any statewide database.
- Member Montes: Thank you. I just wanted to understand.

10. BREAK

The committee recessed at 2:00 PM and reconvened at 2:13 PM

- Ms. Thind: I believe Jonathan proposed a motion to Member Montes' proposed regulation to subdivision A and he motioned to do away with that?
- Jonathan Feldman: Our discussion now is to table this so we can sit and have some conversations.
- Ms. Thind: So right now we left it as an open motion just pertaining to that one section; nothing else that Marisa wrote. Are we going to close that motion, just so we don't leave it open.
- Chairperson Nunez: We can't meet the strict deadline if we don't move on something. I think we will benefit when you two have a meeting of minds. Unfortunately, we have to keep this moving
- Ms. Thind: Why don't we do this? We can go back to our original packet of what you've already seen, what we sent out three weeks ago. We can get your thoughts on that and we can combine it with what Marisa has to offer and then you can have your meeting and give us feedback. We're really just interested in looking at all perspectives so we can draft something that will be a happy medium.
- Jonathan Feldman: When are the regulations due? Is it 2020?
- Mrs. Rivera: No, this committee has to have regulations done by December of this year. To go through OAL and our routing process, we need a whole year for that.
- Ms. Thind: By November 30th they need to be approved OAL and approved by the Secretary of State, to come into effect on January 1st. Our goal here is to have everything decided on everything by December.
- Jonathan Feldman: Ok. I think that is time. So let's take the motion back until we have our discussions, and make some actual decisions in October. There are some criteria that are stronger than others and the chief's know that.
- Member Considine: We would need a subcommittee for that.
- Chairperson Nunez: We can have an ad hoc committee to hash this out. A coalition of the willing.
- Ms. Thind: It would have to be open to the public.
- Jonathan Feldman: That might be too messy. The same people that drafted this bill, just put us back in a room together.
- Ms. Thind: I highly recommend everyone to submit their comments regarding criteria. We welcome it. It would be really helpful when it comes to drafting these regulations.
- Member Montes: The only thing I would appreciate is your guys' honest opinion, without getting heated. Why is a certain criteria more important than another? Or if you guys have to dwell on it, I understand that too. My goal is to find something that pleases both the law enforcement and the community.
- Member Considine: I think there can be a happy medium, but realize, every time we change a criteria, it costs California a lot of money.
- Member Vranicar: I had a comment with respect to gang criteria and tattoos. A particular tattoo can only be used once per contact. However, if he's got multiple tattoos that are the same or similar, each in a different location, each one may be used to satisfy the gang criteria multiple times during one contact. However, each one of these tattoos shall only be documented to meet the gang criteria once. How can you audit or monitor this process when an individual is contacted by different law enforcement agencies? Is it anticipated that the system kicks it out?
- Mrs. Rivera: We can pin that down. We need to wait and see how the criteria conversation goes.
- Mrs. Flint: I'd like to know how this outside conversation will go.

- Member Montes: I am offering myself. I feel like it is my duty as a committee member to take in law enforcement comments.
- Jonathan Feldman: These members can't get together and talk outside of this meeting, but everyone can have their respective representatives submit feedback and I will compile all the feedback. After that, I can speak with Marisa and we can review that information.
- Member Montes: I am hoping I can make a compromise. A fruitful conversation.
- Ms. Thind: Is there a deadline to have this done so you can give it to the DOJ? So we can see it before the October meeting.
- Member Thornton: Why don't we just have the discussion now? I would like to know which criteria law enforcement think is important. I would like to know why law enforcement does not think the neighborhood is reliable.
- Member Considine: It is - with an explanation.
- Member Montes: For my understanding, the issue with gang neighborhood, AB90 took it out.
- Member Cooper: Prior to that we used the criteria as gang area/location.
- Member Montes: But that is out according to AB90?
- Member Cooper: Gang neighborhood is.
- Member Vranicar: In #6, my comment was to add and. Subject has been seen frequenting gang areas (must document specific location) and gang territory.
- Member Thornton: How does law enforcement define who is a reliable informant? And is there some definition of reliable informant that is used across multiple agencies?
- Member Cooper: We use someone who we have worked with in the past who has given reliable information. A parent, teacher, another law enforcement officer or a judge.
- Jonathan Feldman: In the conversation I had with police chiefs last week, it's not always someone you have worked with in the past. It is first-hand knowledge, first-hand account. That is someone they would also consider.
- Member Cooper: Reliable informant is not used often. It is not something you see every day.
- Member Thornton: In training, is there something that states, you can use this method, but we caution against it for various reasons?
- Member Cooper: Whatever you put in the system will be backed up by the FI card or the arrest report. Unless it is protected information.

Referencing Sections pertaining to: Training, recertification timeline/specifics, criteria, retention period, notification (mailing of, verbiage, standardization). (Article 4, sections 773.5, 775.5, 776, and 774.5.) :

- Member Thornton: I had a question about 773.5 (a) (1), "subject has admitted to being a gang member". This is in the context of juveniles. A lot of times juvenile documentation can be used to support gang enhancements for an adult crime. Even if the juvenile case is sealed. In the juvenile system, you have a group of kids hanging together, saying things that aren't true, because other people can hear. When you are FI'ing someone is there some sort of red flag that a juvenile might not be telling the truth because he's around his friends.
- Member Considine: They need to have more criteria.
- Member Cooper: We take everything into consideration because we don't want bad Intel in the system. It doesn't do us any good. We're trying to look at the big picture. This guys trying to act

like he's hard core, but we know he's not. We even have adults that claim membership and they're not.

- Member Thornton: Is this kind of thing stressed when you're training patrol officers on FI'ing? There's patrol officers that come in and are 20 years old. They need to be trained on using their best judgment with this kind of thing.
- Member Cooper-Yes, everything comes into consideration. Everything on an FI card is still evaluated before it is put into the system.
- Member Nunez: It certainly elicits a different response, when you have two 14 year olds. Brain science shows that young people are impulsive, rash and have self-control issues at times. Isn't there something about interrogating or questioning a minor? Where they have to have a lawyer present? Isn't that the law now?
- Member Thornton: That law will not have any effect on these consensual encounters. It is my understanding that FI's are done during consensual encounters.
- Member Montes: Going back to Member Thornton's comments, I think we need to have a discussion about age. What is the minimum age someone can be classified in this database? Because there are all of these concerns with juveniles.
- Mrs. Flint: I think AB 90 laid out that no one under the age of 10 can be entered into CalGang®
- Mrs. Rivera: We can change it - It's not in AB90.
- Member Montes: With that in the legislation, is it capped at 10? Does it leave it open to making it older? Think of a 10 year old child. Think of the actions and the statements they make at that age. I think that age is problematic and can criminalize them for their future. In my dream world, I would like the minimum age to be 18.
- Jonathan Feldman: Maybe we can think about having different criteria for a juvenile at a certain age. Your concern about having people added that shouldn't be added, are matched by our concerns of not adding people that should be added.
- Member Cooper: There was a piece on the news last night about a group of kids in Houston going out doing a string of robberies and the youngest was 11 years old. Pulling guns on people, beating old people with their cane.
- Member Montes: The imperial data shows 12 years old is when juveniles start committing crime. I think that's a little young. 14 is the age you can be tried as an adult. I know there's a bill on the governor's desk that could change that.
- Member Thornton: There is a distinction at 16 also. Certain felonies committed at 16 can be considered adult strikes later on but at 15 they can't be.
- Member Nunez: There are often kids of color that are seen as older than they actually are.
- Member Cooper: Going back to it, you're only going to be effected by this database if you are involved in criminal activity. All CalGang® is saying is "go to this agency to find this FI".
- Member Feldman: I would be hesitant to setting an artificial cap. I would be more open to discussing the criteria that gets a juvenile entered into the system. I feel at no point should we set a cap because that is artificial. I would also like to see whatever empirical data you have been talking about.

Referencing member Vranicar comments regarding section 774.5:

- Member Vranicar: I came up with a comment that says “when an address is unavailable, notification can be sent to an email or text determined during an investigation”. I also wrote definitions for both (e) and (f).
- Member Montes: I would agree with email. Text, I just think of my clients and it wouldn’t be that effective.
- Member Vranicar: If the individual has a phone during the encounter and he has no address, I want to give them notice. I would say “I would be happy to send you a text.”
- Member Nunez: Why not, if it’s the only way to notify them?
- Mrs. Rivera: The notice form is signed by chiefs, correct?
- Member Cooper: As long as we have a scanned copy of the form.
- Ms. Thind: What about the notion of a burner phone? A phone people dispose of regularly?
- Member Vranicar: Then you default down to definitions (e) or (f), that said I tried two times by available means. If they don’t have a physical address either, then you give them the notice right there at the scene. When you get a license suspension, the DMV only mails it to you once. So I say two times undeliverable. That’s it.
- Member Scafiddi: What happens with the DMV, is they put out an H6, which tells law enforcement to notify the person when they are pulled over. They make them sign a document to acknowledge that the license is suspended and it greatly increases penalties.
- Member Considine: Ours is a triplicate form. They walk away with notice right on the scene.
- Member Thornton: I think the reality is, a lot of times law enforcement doesn’t have an accurate address or accurate phone number. I really like the idea of personal service. I like the idea of a physical form at contact, but that can be problematic. Maybe they can be a thing where the officer needs to notify the person next time they are stopped.
- Member Cooper: That would slow the whole system down tremendously. We might not see them again for months. You can’t put them in until you serve them.
- Member Feldman: This has to be practical. We can do the best we can.
- Member Thornton: What are the circumstances when it doesn’t happen at contact? Why doesn’t it happen at contact?
- Member Cooper: For us, we don’t put anybody in until it is reviewed by a supervisor and signed by a captain. That’s the FI coming back, the gang unit looking at it, the lieutenant signs off on it, captain signs the letter, letter is sent, and then you can sit down and input someone into CalGang®.
- Member Scafiddi: Is that state wide practice?
- Member Cooper: That’s our practice for LAPD. Jim said they do a tear off at the scene of the FI.
- Member Scafiddi: They have a number they can call or an address they can write a letter?
- Member Considine: They send a letter.
- Member Montes: I’m trying to envision how the text would work. I can’t see my clients wanting to give you their cell phone number. I think email would be the easiest. People are more likely to keep an email.
- Member Considine: Email addresses can be convoluted. They can be 42 characters with dots here and there.

- Member Feldman: I think it is important to give them the most opportunities to contact someone. Not limit them.

MOTION: Member Feldman motions to Accept the text “email or text” to section 774.5. Member McBride seconds the motion. This is in reference to how notifications can be sent.

APPROVED: Members Cooper, Considine, Huerta, Vranicar all voted yes. Members Scafiddi and Thornton opposed. Members Montes and Nunez abstained. Motion accepted.

Referencing Member Vranicar’s new text to Section 774.5 new Subsections (e) and (f):

- Member Feldman: I can tell you from a chief’s perspective. Having clarity about when they have made attempt is a must. We need to make a set number or we are going to get challenged.
- Member Montes: I would add that in if you only have to document it. If we’re documenting that the notification bounced back twice. Then yes, I’m for it.
- Member Cooper: If we sent out a notification and it comes back. We are spinning our wheels sending it back to the same address.
- Member Scafiddi: Do you do your due diligence when it comes back? Do you run their name to see if they updated their address?
- Member Cooper: Sometimes you just don’t have an address for a guy. But, to not put a guy in the system because he lied about his address, that’s not feasible.
- Member Thornton: The reason I like personals is because my clients hang out in the same neighborhood they make contact with the same police officers. There’s no question they can be found. They’re at the same place all the time. I don’t buy that they are so hard to find it would slow down the process.
- Member Feldman: I think some are easy to find, but some definitely aren’t. You have to account for both. As for sending the notification twice, why waste resources sending something to an address you know is wrong.
- Member Scafiddi: I think what San Bernardino Sheriffs are doing is really best practices. You don’t stop someone for a traffic violation and say “I’m going to send you a ticket tomorrow” you send it right there. How about absent giving them a notification right there, we sent it to their email or text.
- Member Cooper: When you go to save a guy in the system you have to click whether you hand delivered the notification and what was the address, if it was mailed, if they were transient, etc.

MOTION: Member Thornton Motions to adopt the language of one attempt if there is one method of contact. Two attempts if the first notification failed and there is more than one method of contact. Member Montes seconds the motion.

APPROVED: All members voted yes.

11. Public Comment Period #3 Regarding Matters Not on the Agenda (capped at 45 minutes)

*This is the public’s opportunity to address the Committee on items of interest that are within the Committee’s jurisdiction, but are not on the agenda.

General Comments

Melanie Ochoa (ACLU): My comments are really around the “associate” definition, I wanted to focus on that. So first, in particular the first clause of the proposed definition, which would identify people who are friends, confederates, etc. as gang associates. I will focus less so on the portion that required that these gang associates be lesser involved members of the gang. I just don’t see a legitimate basis to put people in a gang database who are affirmatively not gang members, and who have a right to privacy and a right to be free from the various negative consequences that come from being put into this database. I know at the beginning of this discussion, law enforcement suggested that there were no negative consequences, but the audit showed that there were. There were individuals whose own experiences show that just being in this database has had a negative consequence on them, separate and apart from whatever source documentation may be present. So there is no basis to include people who are as you mention: mentors, intervention workers, family members of people that you have designated as gang members. As you’ve mentioned, the need to have this information as an investigative tool as part of the criminal intelligence, there is nothing to prevent information about who someone is seen with or may be known to them in the information for someone who is entered into the database[SIC]. That does not mean that someone should be entered into the database themselves as a separate entry. So if your only reason to have the girlfriend in the database is to know when the gang member “XY” may be at someone’s house and unavailable, then you can put that in gang member XY’s entry. There is no need to have that person separately. The breadth of the definition, if it was actually formally applied, would require that for instance, just about every sheriff’s deputy that works at the men’s central jail be included because there are gangs that exist in the men’s central jail. If that idea offends you, then you should be offended equally on behalf of the mothers, mentors, girlfriends, intervention workers, and coaches that would be included in that database under similar criteria. I’m also unable to follow because it is not internally consistent, law enforcement’s position that the designation of gang associates within the database limits its value as an investigative tool. The second of the two speakers that were here this morning, said “being in the gang database does not mean you’re a gang member, that’s not what we’re using it for.” Repeatedly over and over, it’s stated that whatever is listed in the CalGang® database is not what’s important. What’s important is the source documentation. The setup that Professor Montes recommended, would not change any of the source documentation, and would not change whether someone is actually in the database. The only thing that would change is whether the check box for gang member or gang associate was checked. Based on the representation from law enforcement in this room, that designation has no significance. When that is challenged, then all of a sudden that designation has tremendous significance, and would totally impede the ability for them to conduct investigations. So there is no internal consistency in the statements from law enforcement about what CalGang® does and how it’s set up and how it’s useful.

Sean Garcia-Leys (Youth Justice Coalition): Hello, so first I would like to bring up an issue that I think is not yet been properly addressed by this committee. I accept what seems to be the growing consensus that CalGang is the only shared gang database run by California law enforcement agencies. I know that GREAT which was shared by LA County and LA Sheriffs is long gone. I know that GRIP in Orange County is long gone. I’ve heard orange county police talk about a gang cop system, and it seems completely plausible that that’s gone too. But, we have been bringing up other shared gang databases, besides just those operated by California Law enforcement agencies. The ones I brought up repeatedly are RISS Gang, in which the attorney general sits on the board. The second is, the databases ran by the FBI. So in

particular, their NCIC gang file. Neither of those databases would be subject to the regulations by the Department of Justice. What 186.34 defines a shared gang database as, is a database that is accessed by California law enforcement agencies. What is to be regulated is, the use of shared gang databases by California law enforcement agencies. What that means, is these regulations need to address how California law enforcement agencies will use federal gang databases. So, that has not yet been addressed at all and I hope to see that by the next meeting. The other thing I wanted to bring up, is I think that there are some default positions that I would hope to be shared amongst committee members. The first, is that if there is no public safety goal served by including someone or labeling somebody, that because we respect their right to privacy, that the default position would be to not include that person. That there has to be some real law enforcement purpose. So when we talk about for example, member vs associate, we label someone a gang member. Well if there is 200,000 records in CalGang® right now and we refer to only a small number of those people as gang members, but still had 200,000 people listed in there with full records in there listed as associates, I did not hear a single articulated reason why public safety would be harmed. I understand people say “well, we’re trying to be accurate with our labeling”. The issue here is not to create some sort of academic exercise that accurately assesses the number of gang members. It’s to decide how law enforcement is going to behave when investigating crimes and collecting data. That is another thing that has not been talked about a lot, which is how the gang database regulations will incentivize certain practices on the street or disincentivize certain practices on the street. So, I come back to this idea in my mind of a young man being pulled away from his family at a park, behind a bathroom, officers put on gloves and they go through his hair looking for tattoos. That’s a sort of behavior that makes sense if your goal is to make a huge database that is inclusive as possible. That’s a practice that’s incentivized by that goal. If our goal rather is, what we need to know in order to accurately solve crimes then those sorts of behaviors are not necessary. In fact, we’ve seen that they are counterproductive because they increase confrontations and hostility, especially with adolescence. We know that if you treat an adolescence as a gang member often enough, they will begin to think of themselves as a gang member. So, these sorts of basic ideas of how does having this record make the public more safe is something that needs to be very squarely addressed with every one of the proposals that comes forward. References to things like logical consistency, those should fall second to whether or not you’re respecting people’s privacy and we are respecting the need for using this database as an investigative tool for public safety. One final thing I want to say is, that we need to reign our self that there will be some tweaking to the database that will involve information technology people coming out and making some changes. If member vs associate requires a little bit of tweaking by the software engineers, then I think that should be an acceptable result of this process. Thank you.

Kim McGill (Youth Justice Coalition): Today’s meeting supports much of what has been revealed in other hearings, court cases, community events and substantiated by the CalGang® audit. Number one, shared gang databases are not only a pointer system for the purpose of criminal investigation, but also a surveillance tool. We need a clearer delineation of both the purposes of shared gang databases and their use, so the community members most impacted by allegations, people defending them in court proceedings or other proceedings, including immigration and people concerned about public safety and youth/ community development can understand how shared gang databases impact their lives and work. Two, we urge that these regulations cover all shared databases that document any gang information or allegations in order to establish standards for all databases. Such databases as, LAPD’s Palantir system, chronic offender bulletins, sharing of suspicious activity reports with federal fusion

centers or the establishment of muslim registries. All of these in part, track gang allegations. Three, we urge that there be standard forms used state wide for notifications, inquiry and challenges at the agency level. We appreciate that judicial council has worked with AB 2298 post sponsors to create a standard form for court challenges. It is difficult and confusing when communities, as well as lawyers across the state, have to negotiate differently for each department they encounter. Four, There is no minimum age requirement in any of the three laws passed so far: Senate Bill 458, AB 2298, AB 90. The Youth Justice Coalition's public record act request exposed youth as young as 10, without knowing when those youth were actually added. That means, it could be young people much lower. There is nothing in the current regulations or CalGang® audit that suggests a minimum age, at least which I can find. The CalGang® audit only speaks to the fact that people at a young age were targeted, but not any recommendations as to changing that. We would recommend that because it doesn't exist now. Five, there is still denial regarding the impact gang allegations have on individuals and their life chances. I am saying that as a denial of law enforcement, because the community knows it. The audit stated that CalGang® has the potential to seriously affect a person's life. Three user agencies that responded to the state wide survey, admitted to the Department of Justice that they used CalGang® for employment and military related screenings, which is prohibited under the law. There are many examples that I personally can cite, and I'm just one person. The people that I am naming have already gone on record. Aaron Harvey was detained in county jail for 7 months along with 32 other young men, facing 56 years to life on charges of conspiracy to commit nine shootings. Shootings that the DA said had nothing to do with them, but because of a gang conspiracy law PC 182.5. San Diego Police department detective Rudy Castro, testified in court that there were 448 people in Lincoln Park documented as gang members and an additional 100 individuals he had not had the time to enter into the CalGang® database. If they wanted to, they have the ability to incarcerate all 548 people and put them on the case. Dewan Smith was denied access to the white house to meet with the president's staff about the issues impacting boys and men of color because he was a documented gang member by Compton Sheriffs. Anthony Robles was denied access to the military because he was a "documented gang member". He was told that by a military recruiter. The YJC went to one HACLA hearing, where a tenant was told he would be evicted from public housing where he had lived and grown up because he was a documented gang member. They cited a recent court case as additional evidence, even though his case was dismissed in court. He was eventually evicted. Los Angeles community action workers advocated for a family that was told by HACLA that they would be evicted if they didn't move their 17 year old son from the housing development because he was a documented gang member. It may not be legal for law enforcement to share that information, but someone is sharing it. Press releases issued numerous times by law enforcement after arrests, gang raids, sweeps or use of force resulting in homicides has stated that people involved were "documented gang members". This is to the entire public, hours after an incident or arrest, prior to any court hearing. This not only impacts their life chances, but how they are perceived by the entire community, even after their deaths. Staff at Central High School in Mar Vista Gardens reported that students were stopped by police regularly for "association" as they were leaving their high school. They said they were violating the gang injunction, even though there were only two of them that were part of the gang injunction. They cited their inclusion in a gang registry. In a survey of more than 300 students in LA unified School District, over 54 percent of the students surveyed reported that the people selected for random searches were people that school officials has labeled as "gang members". The YJC, as well as groups across the state, have worked with numerous people who were denied victim compensation because they or their family members were allegedly gang involved. Just this year, we worked with Fathers and

Families of San Joaquin, as well as other groups across the state to change that law. Because without changing the law, that discrimination would not have ended. We have collected several cases from immigration attorneys across the state for people who had no criminal records but were in deportation proceedings because of their inclusion in a gang database. There were also cases of people with a conviction not serious enough for deportation being deported because of them being documented as a gang member. For all of these reasons, the labeling of people under an “associates” category is especially damaging and inhumane. Training must include the impacts that documentation has on a person’s life chances, or how they are talked about after their death. California should move, through legislation, to mandate that CalGang® be the only database that is collecting gang allegations and that any other data collection or surveillance systems must either be fed into and regulated by the Department of Justice under CalGang® or disbanded.

Christopher Sanchez (CHIRLA): Christopher Sanchez with Coalition for Humane Immigrant Rights, California’s largest immigrant rights grass roots non-profit organization. My comments are first, I would like to thank the committee members for a robust conversation regarding criteria, associate and gang member. My comments are more directed to DOJ staff, as Attorney General Bacerra has been absolutely a champion on immigration issues and we think that the legislation AB 90 was specific about immigration enforcement. However, under this administration we are now seeing, starting this month, any individual who is applying for an immigration benefit, doing the right thing, coming forward and revealing themselves to the federal government and saying that they believe that they qualify for this benefit is being scrutinized a lot more and extremely vetted. Therefore, the legislation requires that access not be given for the purposes of immigration enforcement. However, we now have to see the changing to federal policy that would be an immigration benefit that is nothing we can prescribe in statute or within the regulations. From what I understand however, I think that it goes back to the committee for when you are differentiating gang member and gang associate. If a USCIS officer was to inquire from an agency or do a background check on an individual, it might now be that individual that has that association or that membership allegation, but they might be an associate of an associate. That could absolutely hinder someone from being able to qualify for relief either current or future. We are not just talking about undocumented folks, we are absolutely talking about documented people as well, such as legal permanent residence and U-Visa. U-visa individuals have never been placed in deportation proceedings, but under this administration, U-Visa individuals will be placed in deportation proceedings if they are denied an application, which has never happened. This includes under Bush or any other president. So I think as we move forward into the October meetings, differentiating between a gang member and an associate is critical for our communities that we represent in California. Thank you.

Anthony Robles (Youth Justice Coalition): Hello, I’m Anthony Robles. Thank you everybody for this conversation today. In the beginning, in the presentation about CalGang®, it was presented as just a pointer system for solving crime investigations. Then, as the discussion went on, it was talked about as a surveillance tool. A tool to track someone’s evolution within a gang, what their activity is within the streets, gang activity and things like that. So there was to differing presentations on what Calgang® is used for. Is it just to solve crimes, or is it to track and surveil people on the street who are allegedly involved in gangs? So with that, with my experience, if it’s a surveillance tool, it’s dangerous. It is a surveillance tool and it’s dangerous because it casts such a wide net that anyone can get caught up in. As Kim already pointed out, it affects the life chances and the way people are perceived in their communities and can affect opportunities. So basically, I remember one time I was pulled over by the

sheriffs and I was with a friend who was on probation. When we were pulled over, they told him that he was a gang affiliate. They told him he was a gang affiliate in a database. Then they told me that I'm going to be labeled as an affiliate because I'm hanging out with him. I asked them how I am an affiliate of a gang when I'm just an affiliate of an affiliate. We weren't even doing anything. I was literally just driving to my house to hang out. Then they told him that they were going to notify his P.O. and he could possibly be violated for hanging out with an affiliate. We weren't involved in any gang activity and that is an example how a wide net was cast out and he could have possible been violated. I'm not sure if they ever did notify his P.O., but the fact that they said that shows he could have been violated or did some time in jail. I know at the time, he was working at a warehouse and he could have been fired if that happened. This surveillance tool is dangerous to our communities. I think that the category of associate should be eliminated completely. If not, the conversation earlier about how there should be a strict differentiation between a member and an associate because the label of member has such an impact on immigration consequences. There should be a strict differentiation between a member and an associate, that way you can still use the database as a crime investigating tool. Even though ICE does not have direct access to CalGang®, the FBI can go into their national gang database, pull from CalGang®, then DHS can go to the FBI and ask them what they have on gang members, and then that can go to ICE. So even though ICE is not directly accessing CalGang®, they are still getting the information from CalGang®. If there is someone labeled a member and has never been convicted as a crime, they can still be deported. So that's just my opinion, and I want to flag that there is two conflicting presentations on what CalGang® is. One as a pure crime solving tool and the other a surveillance tracking tool. Just as we suspected, it's a surveillance tracking tool. Thank you.

12. Closing Remarks and Adjourn

The meeting was adjourned at 3:43 PM