August 30, 2019

Attorney General Xavier Becerra
1300 I Street, Suite 1740
Sacramento, CA 95814

Department of Justice
State of California

Dear Attorney General Becerra & the Department of Justice,

As the Chief of Police of the San Diego Police Department, I want to express my concerns regarding the proposed changes to the CalGang regulations. These changes will limit law enforcement’s ability to efficiently and effectively identify gang members and inhibit investigations into violent gang crime that negatively affects our communities. It is my hope the attached input from our department gang experts will provide a better understanding of how important this issue is to law enforcement and the communities that we serve.

Sincerely,

David Nisleit
Chief of Police

DN/mn

Enclosures:  1. Requested Changes to Proposed CalGang Regulations
Introduction

This letter is to respectfully request the Attorney General and the Department of Justice reconsider some of the major changes recently made to the proposed CalGang Regulations (August 2019). If these changes occur it will make the communities that are already vulnerable and susceptible to gang violence, more vulnerable by taking away the ability of Law Enforcement to protect them from gangs. As Peace Officers our goal is to prevent victimization and reduce violent crime. Identifying those that participate in gangs helps us to pro-actively prevent and solve crime.

The most critical of the proposed changes is the elimination of 4 major criteria that Law Enforcement uses to determine if a subject is participating in a gang: Association, Location, Clothing, and Reliable Source. As I describe this information please keep in mind that eliminating criteria will reduce our ability to document and keep track of gang members engaged in criminal activity. Simply not documenting them does not make them go away. They will still be in the community committing crimes, but our ability to identify them will be diminished due to fewer criteria being available to support entry into CalGang.

Approach to Gang Documentation

Gang documentation is not something that we as law enforcement take lightly. It is a cumulative process. It is a big picture made up of several smaller facts. No single criterion solely makes someone a gang member. It is important that we have multiple criteria to draw that conclusion from.

The criteria currently used to document gang members were not created in a vacuum. The criteria have been developed and used over many years. Each criterion has been identified as a key risk indicator that a subject is in a gang. We use these criteria to identify gang members and then place them in a legal and well-regulated intelligence database so that we can quickly share and access information in order to investigate and prevent violent crime from occurring in our communities.

The database is highly confidential and is not shared with anyone that does not have a need to know or right to know. This excludes employers and schools from being given any of this information.

I would like to discuss each criterion that is proposed to be eliminated and explain why it should stay. But first let me explain the San Diego Police Department’s stringent process of evaluating the criteria on someone when we are trying to determine their gang involvement.
SDPD stringent review process before documenting a gang member (3 Criteria/3 Levels of approval)

The San Diego Police Department and all agencies within the San Diego CalGang Node requires 3 criteria to document a gang member and enter them into CalGang. This is one additional criterion than required by the current regulations. Within SDPD, when 3 criteria are found on a subject, the source documents from which the criteria were based are examined by a gang detective expert in that particular gang set to determine that the criteria do in fact show the subject is a gang member and meets CalGang Regulations for entry. The 2nd level of approval occurs when the detective must then give the same information and documents to their Sergeant who must also approve. The 3rd level of approval then goes to the Gang Unit Lieutenant who gives the final approval. Once that 3rd level of approval is made, then the information can be entered into CalGang.

Gang Documentation notifications and rights to appeal

Prior to a person being entered into CalGang they are notified by a letter. They have two levels of appeal. The first level is to the police department in which they have an opportunity to present any information that would show they should not have been entered into CalGang. The police department reviews that information and if they agree the subject is removed from CalGang. If the police department does not agree the subject can then petition the court to determine if removal would be appropriate.

It is important to understand the comprehensive safe guards in place and explain why we still need the criteria to do our job; there is a robust process in place to prevent someone from being entered as a gang member without reason and a robust appeal system if they feel they were enter in error.

The following 4 Criteria to documents gang members should be retained

It is our position that criteria, when properly evaluated and used with other criteria, can be a significant indicator of gang membership or association, and therefore, the following criteria should NOT be removed from the current proposed CalGang Regulations:

1. Association

Association with other gang members is one of the biggest indicators of gang membership. It is critical that this criterion be maintained. The reason a gang exists is due to gang members associating with each other. By definition, a gang is a group of individuals associating to engage in criminal activity. In studies it has been found that one of the strongest risk factors for gang membership is associating with peers who engage in delinquency. Association with other gang members it is a crucial piece of information for law enforcement to use to determine if that person is participating in a gang.

2. Clothing

Clothing: Wearing gang specific clothing, including specific colors, allows everyone to know which gang a person associates with. It is a badge of honor among gang members who wear their colors with pride. Clothing is so important that if a person were to walk through another gang’s territory with the wrong color on, violence would likely occur. The type of clothing, including the color, when properly evaluated and in combination with other gang criteria is very important to help determine gang membership.
3. **Gang Location**

**Location:** The term “gang turf” remains relevant to gang life. Each gang has their own territories, boundaries, parks, and hangouts that they frequent. If a rival gang enters these areas, or an unsuspecting victim enters these areas at the wrong time and wrong place, there is a likelihood that violence will occur. For this reason, when Law Enforcement find a subject loitering, congregating, and hanging out in these areas, it as an important piece of information suggesting that they may be involved in a gang. If the person was not involved in a gang, they would likely become a victim of that gang set whose territory upon which they were infringing. Again, just because a person is in a certain neighborhood does not automatically make them a gang member, but combined with other criteria, this criterion of location is very important for law enforcement when determining gang membership.

4. **Reliable Source**

**Reliable Source:** Information that we receive from a reliable source may be an important piece of information to the overall evaluation of whether a subject is a gang member. Examples of reliable sources include victims, parents, teachers, and other gang members.

**Conclusion on the need to retain all current criteria**

In summary, Law Enforcement needs ALL of these criteria to help us in our evaluation of a subject as a gang member. Of all the proposed changes to the CalGang regulations, eliminating these 4 criteria would be the most detrimental. We need these criteria to help protect our communities that are vulnerable to gang violence. If these tools are stripped from us we will not be able to serve the public as efficiently and effectively.

Law Enforcement understands the concern that is being expressed about the rights of those being entered into CalGang. With the enactment of Penal Code sections 186.34 and 186.35, individuals entered into CalGang are entitled to more information, and have more remedies than ever before. These rights must also be balanced with those of victims of gang crime, past, present, and future, and the rights of community members to live in a safe, peaceful environment. The existing rules and regulations, as well as more recent state laws, adequately protect privacy and due process. Please let Law Enforcement do their job to protect vulnerable communities. Let them keep these tools. If these tools are taken away it will negatively affect the communities law enforcement is sworn to protect.
Additional requests by SDPD and the San Diego CalGang Node:

- Retain the current 1 criteria to continue an adult subject in CalGang instead of the proposed 2 criteria: 754.2(b).

- Retain the current 5 year retention for juveniles instead of the proposed 3 years: 754.4(a).

- Self-Admission (752.2(b) (1)): Retain the original wording of “The person has admitted to being a gang member” instead of the proposed addition of the words “Currently Active.” Gang members are not going to admit to being “currently – active.” Using this term in the regulation removes the ability of the officer or detective to use their expertise, experience, and other factors to determine if the suspect admitted to being a gang member. “Currently active” is an undefined standard with no context, statutes, or case law to draw from when determining whether a gang member is currently active for purposes of gang database documentation.

SDPD Gang Detective expertise on Self Admissions

“I have worked in the gang unit for over nine years and have testified as a gang expert in Asian and Hispanic gangs over twenty five times. It is my experience very few gang members ever admit they are “currently active.” Gang members are well aware of the 186.22 PC enhancement. (NAME REDACTED) was arrested in 2014 and recited the 186.22 PC section to me when he was 14 years old.

“Self-admissions come down to semantics. I most commonly hear “I’m from there, “I got jumped in when I was a teen, but I’m not active”, or they just tell law enforcement they associate with people from that gang. These are the guys we are going to court on and explaining to a jury essentially how they are active gang members who are actively putting in work. The “currently active” needs to be revised to “The person has admitted to being a gang member”

Here are a few suspects who did not admit to being “currently active”:

05/23/19 – (NAME REDACTED) (Oriental Killer Boys), 187 PC shooting 6500 Kelly Street: (NAME REDACTED) stated in a field interview to being “part of the gang Southeast Oriental Killer Boys”. He did not specify he was currently active but he shot a rival LV 13 gang member. We have over one hundred photos of him displaying gang hand signs and associating with OKB members.

02/15/19 – (NAME REDACTED) (Tiny Rascal Gang), 664/187 PC shooting at 4600 Convoy Street: (NAME REDACTED) said he was jumped into TRG when he was a teenager but did not specify he was currently active. He did admit to shooting a rival Oriental Boys gang member five times in the chest.

09/27/16 – (NAME REDACTED) (Asian Crips), 211 PC armed robbery w/gun at 4000 44th Street: (NAME REDACTED) has self-admission back to 1995 and claimed AC gang when arrested but claimed he was not active. (NAME REDACTED) was convicted of 211 PC.
Section 752.2 (b)(1) - The proposed language is too restrictive.

752.2 (b)(1) The person has admitted to being a currently-active Gang Member or a Gang Associate under circumstances that do not undercut truthfulness. The law enforcement officer shall document the relevant circumstances of the admission including, but not limited to: the location of the contact; the person(s) present during the conversation; the admitting person’s demeanor; and whether the admitting person appeared to be under the influence of drugs or alcohol.

The new language combined with “shall” is too restrictive for Law Enforcement and would create an undue burden on most agencies to implement changes if required to document these factors. We recommend adding the word “may” instead of “shall” so that the officers would documents all relevant information available to them, including the new specific language, but officer would not be required to do so if the information is not available to them.

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