

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY JUNE 20, 2013

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 458

Introduced by Senator Wright

(Coauthor: Senator Yee)

(Coauthors: Assembly Members Bradford, Brown, Hall, Jones-Sawyer,
V. Manuel Pérez, Rendon, and Ting)

February 21, 2013

An act to add Section 186.34 to the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 458, as amended, Wright. Gangs: statewide database.

Existing law, the California Street Terrorism Enforcement and Prevention Act, makes it unlawful to engage in criminal gang activity, including actively participating in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and willfully promoting, furthering, or assisting in any felonious criminal conduct by members of the gang.

This bill would require, prior to a local law enforcement agency designating, or submitting a document to the Attorney General's office for the purpose of designating, a person as a gang member, associate,

or affiliate in a shared gang database, as defined, the local law enforcement agency to provide written notice to the person and his or her parent or guardian of the designation and the basis for the designation if the person is under 18 years of ~~age~~. *age, except as specified.* The bill would authorize the person or his or her parent or guardian to submit written documentation contesting the designation and would require the local law enforcement agency to provide written verification of its decision within 60 days.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.34 is added to the Penal Code, to
2 read:
3 186.34. (a) (1) For purposes of this section, “shared gang
4 database” shall mean any database that ~~allows~~ *satisfies all of the*
5 *following:*
6 (A) ~~Allows access for any local law enforcement agency and~~
7 ~~contains~~ *agency.*
8 (B) *Contains* personal, identifying information in which a person
9 may be designated as a suspected gang member, associate, or
10 affiliate, or for which entry of a person in the database reflects a
11 designation of that person as a suspected gang member, associate,
12 or affiliate.
13 (C) *Is subject to Part 23 of Title 28 of the Code of Federal*
14 *Regulations. If federal funding is no longer available to a database*
15 *through the federal Omnibus Crime Control and Safe Streets Act*
16 *of 1968 (42 U.S.C. 3711 et. seq.), a database shall not have to*
17 *satisfy this subparagraph to meet the definition of a “shared gang*
18 *database.”*
19 (2) A “shared gang database” *does not include dispatch*
20 *operator reports, information used for the administration of jail*
21 *or custodial facilities, criminal investigative reports, probation*
22 *reports, or information required to be collected pursuant to Section*
23 *186.30.*
24 (b) To the extent a local law enforcement agency elects to utilize
25 a shared gang database, as defined in subdivision (a), prior to a
26 local law enforcement agency designating a person as a suspected
27 gang member, associate, or affiliate in a shared gang database, or

1 submitting a document to the Attorney General’s office for the
2 purpose of designating a person in a shared gang database, or
3 otherwise identifying the person in a shared gang database, the
4 local law enforcement agency shall, if the person is under 18 years
5 of age, provide written notice to the person and his or her parent
6 or guardian of the designation and the basis for the ~~designation.~~
7 *designation, unless providing that notification would compromise*
8 *an active criminal investigation or compromise the health or safety*
9 *of the minor.*

10 (c) Subsequent to the notice described in subdivision (b), the
11 person to be designated as a suspected gang member, associate,
12 or affiliate, or his or her parent or guardian, may submit written
13 documentation to the local law enforcement agency contesting the
14 designation. The local law enforcement agency shall review the
15 documentation, and if the agency determines that the person is not
16 a suspected gang member, associate, or affiliate, the agency shall
17 remove the person from the *shared gang* database. The local law
18 enforcement agency shall provide the person and his or her parent
19 or guardian with written verification of the agency’s decision
20 within 60 days of submission of the written documentation
21 contesting the designation.

22 (d) The person to be designated as a suspected gang member,
23 associate, or affiliate, or his or her parent or guardian, shall be able
24 to request information as to whether the person has been designated
25 as a suspected gang member, associate, or ~~affiliate.~~ *affiliate, and*
26 *the local law enforcement agency shall provide that information,*
27 *unless doing so would compromise an active criminal investigation*
28 *or compromise the health or safety of the minor.*

29 (e) The local law enforcement agency shall not disclose the
30 location of the person to be designated as a suspected gang
31 member, associate, or affiliate to his or her parent or guardian if
32 the agency determines there is credible evidence that the
33 information would endanger the health or safety of the minor.

34 (f) A shared gang database, as defined in this section, shall retain
35 records related to the gang activity of the individuals in the
36 database ~~as follows:~~ *consistent with the provisions contained in*
37 *Section 23.20(h) of Title 28 of the Code of Federal Regulations.*

38 (1) ~~A record that has not been modified by the addition of new~~
39 ~~criteria to determine gang profile for a five-year period shall be~~

1 purged. Individuals who are in custody shall be subject to the same
2 purge policy under this paragraph.

3 (2) ~~A record created by an agency shall not be purged pursuant~~
4 ~~to paragraph (1) if that record has been substantially modified by~~
5 ~~another end user agency. For the purpose of this subdivision,~~
6 ~~substantially modified means the addition of new gang member~~
7 ~~criteria to the subject's record or the subject has a new arrest record~~
8 ~~with a gang nexus in his or her record.~~

9 (g) ~~Except as expressly allowed by this section, nothing~~ *Nothing*
10 in this section shall require a local law enforcement agency to
11 disclose any information protected under Section 1040 or 1041 of
12 the Evidence Code or Section 6254 of the Government Code.