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AMENDED IN ASSEMBLY MAY 31, 2016

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AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2298

Introduced by Assembly Member Weber

(Principal coauthor: Senator Leno)

(Coauthor: Senator Mitchell)

February 18, 2016

An act to amend *Section 70615 of the Government Code*, and to amend Section 186.34 of, and to add Section 186.35 to, the Penal Code, relating to criminal gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 2298, as amended, Weber. Criminal gangs.

Existing law, the California Street Terrorism Enforcement and Prevention Act (act), provides specified punishments for certain crimes committed for the benefit of, at the direction of, or in association with, a criminal street gang, as specified. The act defines a “shared gang database” as having various attributes, including, among others, that the database contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate. Existing law requires a law enforcement agency, before designating a person as a suspected gang member, associate, or affiliate in the database, to

provide a written notice to the person's parent or guardian, if the person is a minor.

This bill would require the notice described above to be provided to an adult before designating a person as a suspected gang member, associate, or affiliate in the database. The bill would require these databases to comply with federal requirements regarding the privacy and accuracy of information in the database, and other operating principles for maintaining these databases. The bill would require local law enforcement, commencing January 15, 2018, and every January 15 thereafter to submit specified data pertaining to the database to the Department of Justice, and would require the Department of Justice, commencing February 15, 2018, and every February 15 thereafter, to post that information on the department's Internet Web site. ~~The bill would require that a person designated as a suspected gang member, associate, or affiliate in a shared gang database who has not been convicted of a violation of gang-related crimes, as specified, within 3 years of the initial designation be removed from the database.~~

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The bill would establish a procedure for a person designated in a shared gang database ~~to challenge that designation through an administrative hearing and~~ *who has contested that designation with the local law enforcement agency and whose challenge has been denied to appeal to the superior court.*

~~By requiring local law enforcement to implement an appeal process for persons designated in a shared gang database, this bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 *SECTION 1. Section 70615 of the Government Code is*
2 *amended to read:*

3 70615. The fee for filing any of the following appeals to the
4 superior court is twenty-five dollars (\$25):

5 (a) An appeal of a local agency’s decision regarding an
6 administrative fine or penalty under Section 53069.4.

7 (b) An appeal under Section 40230 of the Vehicle Code of an
8 administrative agency’s decision regarding a parking violation.

9 (c) An appeal under Section 99582 of the Public Utilities Code
10 of a hearing officer’s determination regarding an administrative
11 penalty for fare evasion or a passenger conduct violation.

12 (d) *An appeal under Section 186.35 of the Penal Code of a law*
13 *enforcement agency’s determination regarding the placement of*
14 *an individual’s information in a shared gang database.*

15 **SECTION 1.**

16 *SEC. 2. Section 186.34 of the Penal Code is amended to read:*

17 186.34. (a) (1) For purposes of this section, “shared gang
18 database” shall mean any database that satisfies all of the following:

19 (A) Allows access for any local law enforcement agency.

20 (B) Contains personal, identifying information in which a person
21 may be designated as a suspected gang member, associate, or
22 affiliate, or for which entry of a person in the database reflects a
23 designation of that person as a suspected gang member, associate,
24 or affiliate.

25 (C) Is subject to Part 23 of Title 28 of the Code of Federal
26 Regulations. If federal funding is no longer available to a database
27 through the federal Omnibus Crime Control and Safe Streets Act
28 of 1968 (42 U.S.C. Sec. 3711 et seq.), a database shall not have
29 to satisfy this subparagraph to meet the definition of a “shared
30 gang database.”

31 (2) A “shared gang database” does not include dispatch operator
32 reports, information used for the administration of jail or custodial
33 facilities, criminal investigative reports, probation reports, or
34 information required to be collected pursuant to Section 186.30.

35 (3) Notwithstanding subparagraph (C) of paragraph (1), a
36 “shared gang database” includes the CalGang system, operated
37 pursuant to Part 23 of Title 28 of the Code of Federal Regulations.

1 (b) Notwithstanding subparagraph (C) of paragraph (1) of
2 subdivision (a), a shared gang database, as defined in this section,
3 shall retain records related to the gang activity of the individuals
4 in the database consistent with the provisions contained in Section
5 23.20(h) of Title 28 of the Code of Federal Regulations.

6 (c) (1) Commencing January 15, 2018, and annually on January
7 15 thereafter, any law enforcement agency that elects to utilize a
8 shared gang database, as defined in subdivision (a), shall submit
9 a report to the Department of Justice, in a format developed by the
10 department, that contains, by ZIP Code, referring agency, race,
11 gender, and age, the following information:

12 (A) The number of persons included in the database on the day
13 of reporting.

14 (B) The number of persons added to the database during the
15 immediately preceding 12 months.

16 (C) The number of requests for removal of a person from the
17 database received during the immediately preceding 12 months.

18 (D) The number of requests for removal of a person from the
19 database that were granted during the immediately preceding 12
20 months.

21 (E) The number of persons automatically removed from the
22 database during the immediately preceding 12 months.

23 (2) Commencing February 15, 2018, and annually on February
24 15 thereafter, the Department of Justice shall post each law
25 enforcement agency's report that contains the information collected
26 pursuant to paragraph (1) on the department's Internet Web site.

27 (d) (1) To the extent a local law enforcement agency elects to
28 utilize a shared gang database, as defined in subdivision (a), prior
29 to a local law enforcement agency designating a person as a
30 suspected gang member, associate, or affiliate in a shared gang
31 database, or submitting a document to the Attorney General's
32 office for the purpose of designating a person in a shared gang
33 database, or otherwise identifying the person in a shared gang
34 database, the local law enforcement agency shall provide written
35 notice to the person, and shall, if the person is under 18 years of
36 age, provide written notice to the person and his or her parent or
37 guardian, of the designation and the basis for the designation,
38 unless providing that notification would compromise an active
39 criminal investigation or compromise the health or safety of the
40 minor.

1 (2) The notice described in paragraph (1) shall describe the
2 process for the person, or, if the person is under 18 years of age,
3 for his or her parent or guardian, or an attorney working on behalf
4 of the person, to contest the designation of the person in the
5 database. The notice shall also inform the person of the reason for
6 his or her designation in the database.

7 (e) (1) (A) A person, or, if the person is under 18 years of age,
8 his or her parent or guardian, or an attorney working on behalf of
9 the person may request information of any law enforcement agency
10 as to whether the person is designated as a suspected gang member,
11 associate, or affiliate in a shared gang database accessible by that
12 law enforcement agency and what law enforcement agency made
13 the designation. A request pursuant to this paragraph shall be in
14 writing.

15 (B) If a person about whom information is requested pursuant
16 to subparagraph (A) is designated as a suspected gang member,
17 associate, or affiliate in a shared gang database by that law
18 enforcement agency, the person making the request may also
19 request information as to the ~~reason~~ *basis* for the designation for
20 the purpose of contesting the designation as described in
21 subdivision (f).

22 (2) The law enforcement agency shall provide information
23 requested under paragraph (1), unless doing so would compromise
24 an active criminal investigation or compromise the health or safety
25 of the person if the person is under 18 years of age.

26 (3) The law enforcement agency shall respond to a valid request
27 pursuant to paragraph (1) in writing to the person making the
28 request within 30 calendar days of receipt of the request.

29 (f) Subsequent to the notice described in subdivision (d), the
30 person to be designated as a suspected gang member, associate,
31 or affiliate, or his or her parent or guardian, may submit written
32 documentation to the local law enforcement agency contesting the
33 designation. The local law enforcement agency shall review the
34 documentation, and if the agency determines that the person is not
35 a suspected gang member, associate, or affiliate, the agency shall
36 remove the person from the shared gang database. The local law
37 enforcement agency shall provide the person and his or her parent
38 or guardian with written verification of the agency's decision
39 within 30 days of submission of the written documentation
40 contesting the designation. If the law enforcement agency denies

1 the request for removal, the notice of its determination shall state
2 the reason for the denial. The person may appeal the denial
3 pursuant to Section 186.35.

4 ~~(g) A person designated as a suspected gang member, associate,~~
5 ~~or affiliate in a shared gang database who has not been convicted~~
6 ~~of a violation of Section 186.22 within three years of the initial~~
7 ~~designation shall be removed from the database.~~

8 ~~(h)~~

9 (g) Nothing in this section shall require a local law enforcement
10 agency to disclose any information protected under Section 1040
11 or 1041 of the Evidence Code or Section 6254 of the Government
12 Code.

13 ~~SEC. 2.~~

14 *SEC. 3.* Section 186.35 is added to the Penal Code, to read:

15 ~~186.35. (a) A person who is listed by a law enforcement agency~~
16 ~~in a shared gang database as a gang member, suspected gang~~
17 ~~member, associate, or affiliate may contest that designation~~
18 ~~pursuant to this section. The person may contest the designation~~
19 ~~initially pursuant to this section or a denial as specified in~~
20 ~~subdivision (f) of Section 186.34.~~

21 ~~(b) The person may request an administrative hearing to review~~
22 ~~the designation decision.~~

23 ~~(c) An administrative hearing shall be held within 90 calendar~~
24 ~~days following the receipt of a request for an administrative~~
25 ~~hearing. The person requesting the hearing may request one~~
26 ~~continuance, not to exceed 21 calendar days.~~

27 ~~(d) The administrative hearing shall be conducted in accordance~~
28 ~~with written procedures established by the agency. The hearing~~
29 ~~shall provide an independent, objective, fair, and impartial review~~
30 ~~of a contested designation.~~

31 ~~(e) The agency shall appoint or contract with qualified examiners~~
32 ~~or administrative hearing providers that employ qualified examiners~~
33 ~~to conduct the administrative hearings. Examiners shall~~
34 ~~demonstrate those qualifications, training, and objectivity necessary~~
35 ~~to conduct a fair and impartial review.~~

36 ~~(f) The examiner's decision following the administrative hearing~~
37 ~~may be personally delivered to the person by the examiner or sent~~
38 ~~by first-class mail, and, if the designation is not canceled, shall~~
39 ~~include a written reason for that denial.~~

1 ~~(g) Within 30 calendar days after the mailing or personal~~
2 ~~delivery of the examiner's decision, the person may seek review~~
3 ~~by filing an appeal to be heard by the superior court where the~~
4 ~~appeal shall be heard de novo. A copy of the notice of appeal shall~~
5 ~~be served in person or by first-class mail upon the agency by the~~
6 ~~person. For purposes of computing the 30-calendar-day period,~~
7 ~~Section 1013 of the Code of Civil Procedure shall be applicable.~~

8 *186.35. (a) A person who is listed by a law enforcement agency*
9 *in a shared gang database as a gang member, suspected gang*
10 *member, associate, or affiliate and who has contested his or her*
11 *designation pursuant to subdivision (f) of Section 186.34, may seek*
12 *review within 90 calendar days of the agency's mailing or personal*
13 *service of the verification of the decision by filing an appeal to be*
14 *heard by the superior court. A proceeding under this subdivision*
15 *is a limited civil case. A copy of the notice of appeal shall be served*
16 *in person or by first-class mail upon the agency by the person. For*
17 *purposes of computing the 90-calendar-day period, Section 1013*
18 *of the Code of Civil Procedure shall be applicable.*

19 *(b) The evidentiary record for the appeal shall be limited to the*
20 *agency's statement of basis of its designation made pursuant to*
21 *subdivision (e) of Section 186.34, and the documentation provided*
22 *to the agency by the appellant pursuant to subdivision (f) of Section*
23 *186.34. If, upon de novo review and any arguments presented to*
24 *the court, the court finds that the law enforcement agency has*
25 *failed to establish the petitioner's active gang membership,*
26 *associate status, or affiliate status by clear and convincing*
27 *evidence, the court shall order the law enforcement agency to*
28 *remove the name of the person from the shared gang database.*

29 ~~(h)~~

30 *(c) The fee for filing the notice of appeal is as provided in*
31 *Section 70615 of the Government Code. The court shall notify the*
32 *person of the appearance date by mail or personal delivery. The*
33 *court shall retain the fee under Section 70615 of the Government*
34 *Code regardless of the outcome of the appeal. If the court finds in*
35 *favor of the person, the amount of the fee shall be reimbursed to*
36 *the person by the agency.*

37 ~~(i) The law enforcement agency has the burden of demonstrating~~
38 ~~active gang membership, associate status, or affiliate status to the~~
39 ~~court by clear and convincing evidence.~~

1 ~~(j) A successful challenge to the designation shall result in the~~
2 ~~removal of the person from the shared gang database.~~

3 ~~SEC. 3.~~

4 *SEC. 4.* If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.