

*I. C. Address the increasing gang problem in Texas including consideration of the needs of prosecutors and law enforcement agencies.*

**Introduction**

Pursuant to the 1993 overhaul of the Texas Penal Code, prosecutors now have many valuable prosecutorial tools in their arsenal. Along with a streamlined penal code came increased sentences for violent crimes and ample prison space. Prosecutors have stated no additional offenses or lengthening of sentences are now needed in order to more effectively prosecute gang-related crime in Texas.

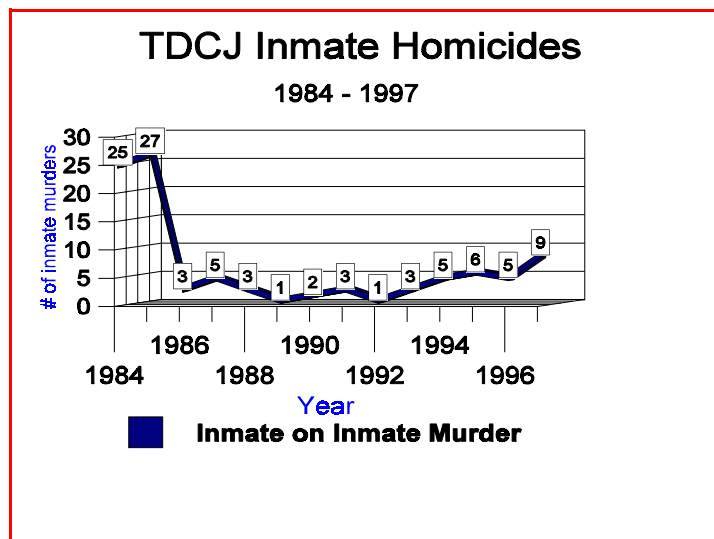
To date, the organized crime statute (Chapter 71, Penal Code) has been rarely used by Texas prosecutors. According to prosecutors, better coordination between local law enforcement and prosecutors when investigating organized crime cases, as well as modifying certain evidentiary rules, would encourage greater use of the statute. Coordination between law enforcement and prosecutors is referred to as “vertical prosecution”. In the federal system, the Federal Bureau of Investigation is required to incorporate the United States Attorney’s Office when building an organized crime case in order to ensure the case is investigated properly. This close coordination ultimately provides for a stronger case for prosecutors.

Law enforcement and prosecutors have testified that the implementation of a statewide gang intelligence database would provide a helpful tool in investigating gang-related crime in Texas. Currently, the Code of Criminal Procedure prohibits submission of gang intelligence to a statewide centralized database, but allows compilation of this type of information on a local or regional level. (This issue is discussed at length in a subsequent section of the report.)

As the number of juveniles and adults incarcerated in Texas continues to increase, the need to control gang activity within our correctional institutions has increased as well. Also, the need to address gang activity among the probation and parole population has increasingly become more critical. Prison Gangs have proven to be particularly violent, both inside and outside the correctional setting. Prison gangs have also been responsible for trafficking in drugs, tobacco products, sex and other illegal activities from behind prison walls.

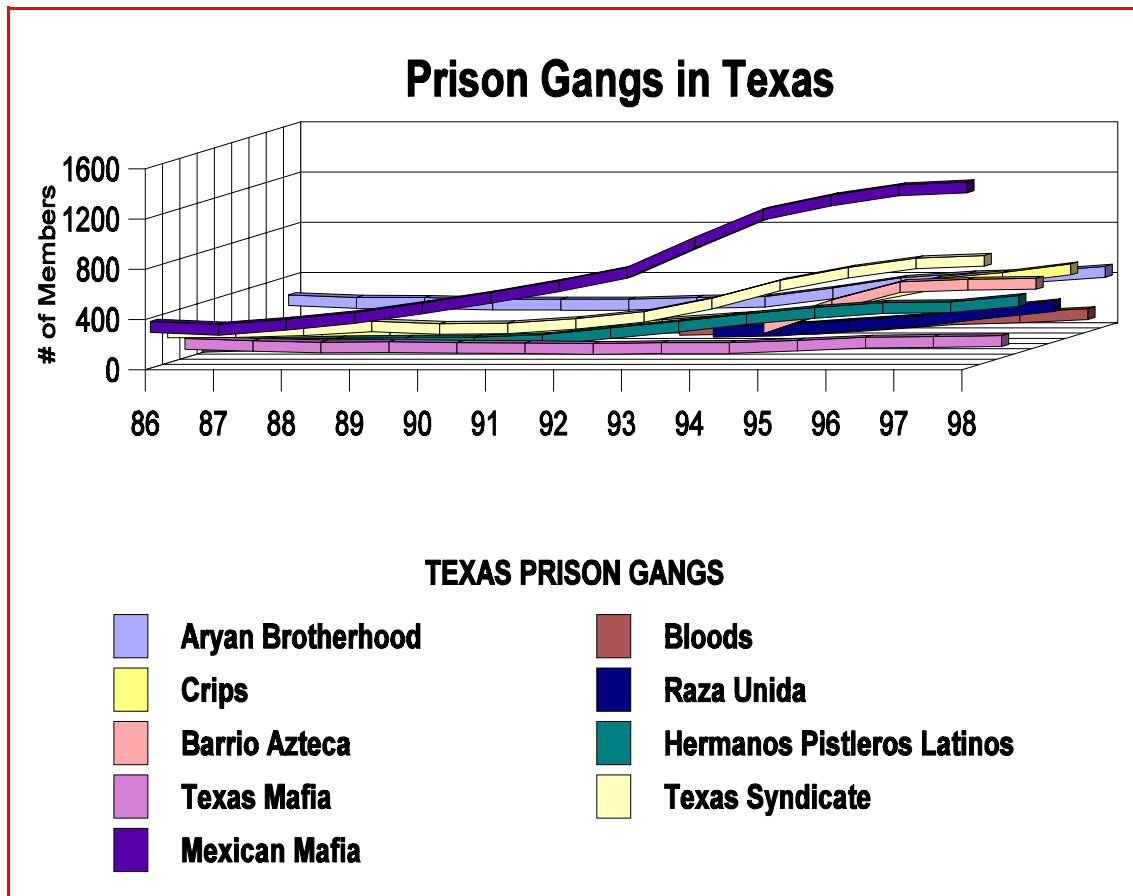
**TDCJ-ID**

Through policy, the Department of Criminal Justice Institutional Division (TDCJ-ID) identifies offenders who are members of a prison gang or security threat group and once confirmed, offenders of designated gangs are recommended for confinement in administration segregation cells. As a result of this policy, which originated in September of 1985 when prison violence was at a peak, gang-related murders and assaults have decreased dramatically.



Prison design and construction for administrative segregation beds is a costly, but necessary expenditure. In response to the increasing demand for administrative segregation beds, this past year, the state leadership authorized construction of two additional high security prison facilities at a cost ranging from \$32 - \$34 million per facility. These construction costs will be borne from bonds approved for prison construction in 1993, but not yet expended.

TDCJ officials have identified ten major prison gangs or security threat groups operating inside Texas prisons, with an estimated 5,000 active members. A security threat group is defined by TDCJ-ID as “any group of offenders which TDCH reasonably believes poses a threat to the physical safety of other offenders or staff due to the nature of said security threat group.” The need to increase funding to the Security Threat Management Office (STGMO) was recognized by the Board of Criminal Justice in June of 1998, after attention was focused on prison gangs when three TDCJ parolees, allegedly members of a white-supremacist group, brutally killed an African-American, James Byrd, Jr. in Jasper, Texas. The Board increased the STGMO budget by \$350,000 for the remaining 98-99 biennium, providing for additional investigators, as well as providing for the purchase of additional computer equipment.



## **TYC**

According to the Texas Youth Commission (TYC), 36 % of the youths entering the juvenile system are known gang members, however, it is estimated that this figure is considerably low. Since January, TYC has experienced numerous disturbances in various facilities, including one riot in April at the Evins Regional Juvenile Justice Center in Hidalgo County. During this incident, half of the 96 bed open bay facility was involved, and 16 Hidalgo County Sheriff's Deputies and 25 additional TYC staff had to be called in to control the riot. An estimated \$80,000 in state property was damaged and the facility was temporarily closed to incoming students until the facility was considered stabilized. In FY 97, TYC experienced a 54% increase in aggressive assaults with a total of 340 assaults. In the first six months of FY 98, 233 assaults had already occurred, giving rise to speculation of another 37% increase in assaults by the end of FY 98. Currently, all security units are full to capacity with gang members and other aggressive youth who pose a continuous threat of danger, thus precluding use of these cells on an intermittent basis for disciplinary action with other students.

TYC statistics reveal that assaults are four times as high in institutions with open bay dorms. TYC reports in FY 1998, there were over 400 assaults per 100 average daily population in institutions with open bay dorms compared to 100 assaults per 100 average daily population in institutions with single occupancy dorms.

Additionally, a 1:12 staffing ratio is essential in open bay dorms for adequate control over living areas, communications, and student movement between buildings.

## **TDCJ-Parole Division**

As prison gang membership increases, the number of parolees in prison gangs will continue to increase. Many prison gangs require a "blood in-blood out" oath, so consequently, it is very difficult, if not impossible, to simply cancel your membership in a prison gang. Often times, prison gang members, once released from prison, are required to carry out "hits" or contract murder, or engage in drug trafficking and other organized criminal activities and send the profits to those gang members still incarcerated. The committee held a special hearing on June 25<sup>th</sup> to focus on the problem of prison gangs in Texas. The committee learned that the Parole Division currently has no statewide policies in place specifically designed to address parole caseloads with prison gang members. However, since the hearing, the Parole Division has outlined new procedures to assist in identifying and responding to releasees who are suspected or confirmed members of gangs, hate groups, or other security threat groups.

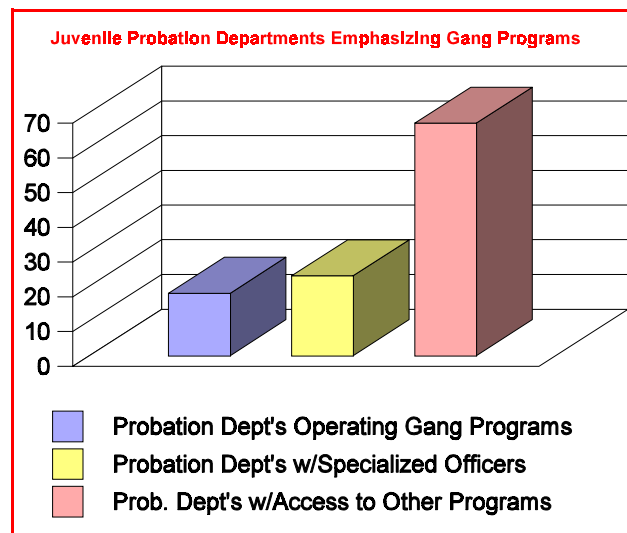
## **Juvenile Probation**

The Texas Juvenile Probation Commission testified on the scope of juvenile probation gang-related activities at the June 25<sup>th</sup> hearing of the committee. Commission testimony revealed that in the last decade, felony referrals have increased 18 percent, while violent offense referrals increased a staggering 134 %. However, since 1995, referrals have started to decline. Felony referrals have decreased 20 % and violent offense referrals have decreased 15 % in the last three years.

The 1997 Texas Juvenile Probation Commission statewide resource survey resulted in 66 % of the local juvenile probation departments clearly identifying a total of 2,683 juvenile gangs in their combined jurisdictions (up 20 % from 1996). Eighty-five percent of the departments reported evidence of juvenile gangs in their jurisdictions (i.e., groups wearing the same colors, claiming allegiance, flashing signs, etc.), and 80 % had evidence of illegal gang activity (i.e., graffiti, unusual number of assaults, drive-by shootings, etc.).

The impact of these gangs is evident. According to the resource survey referenced above, gang activity represents 11 % of all referrals and 11 % of all probationers. In addition, it represents 34% of all commitments to TYC. These figures are significantly lower than 1996 percentages. Gang members are not a large part of total activity, but their involvement continues to be in the more serious felony crimes resulting in both formal probation and commitment to TYC.

While 139 probation departments showed evidence of gang activity, only 23 departments had a specialized officer to supervise or work with gang members. Only 18 departments operated a gang program in their area and 67 departments had access to a program operated by another agency in their region.



Juvenile Court Judges often times may impose certain gang-related restrictions on a juvenile as conditions of their probation. These conditions may include the following:

**Sample Probation Conditions for Gang Offenders\***

- Do not associate with specific gangs and specific gang members.
- Do not associate with co-actors.
- Prohibit child from going to specific locations where the gang is known to hang out.
- Do not wear, display, use or posses any insignia, emblem, button, badge, cap, hat, scarf, bandanna, or any article of clothing which is evidence of affiliation with or membership in any known street gang & including the specific gang the juvenile is affiliated with.
- Prohibit gang activities such as hand signs, drawings, and tagging.
- Do not own, use, or possess an electronic paging device.

**\* These sample conditions of probation have been taken from juvenile court orders used in various Texas counties.**

Local Juvenile Probation Departments vary in their approach to addressing the gang issue in their communities. Specialized juvenile probation programs dealing with gang-identified youth may include the following:

- \* Juvenile probation officers that specialize in supervising gang members
- \* Cooperation with law enforcement to identify probationers who are seen with gang members
- \* Intensive supervision of gang affiliated youth
- \* School and community gang awareness programs
- \* Group counseling and education to discourage gang involvement

### **Civil Remedies**

Texas' civil nuisance laws can be a valuable tool in curbing illegal gang activity in our communities. Chapter 125 of the Civil Practice and Remedies Code provides for *common* and *public* nuisance abatement.

The two provisions, *Common Nuisance*, Sec. 125.001, and *Public Nuisance*, Sec.125.021, differ in that a *Common Nuisance* suit can be brought against **only** the person who maintains the property; a *Public Nuisance* suit can be brought against the person who controls the property, but also against a “*combination*” or “*criminal street gang*” (as defined in Ch. 71. Penal Code). In addition, a *Public Nuisance Suit* includes additional remedies such as requiring the person who maintained the property to post a bond of \$5,000 to \$10,000, allows for the discontinuation of utility services, and *any other legal remedy available*. A *Common Nuisance Suit* requires the court to close the property for one year if an injunction is granted, unless the person posts a \$10,000 bond.

Under Section 125.065, if the court finds that a “combination” or “criminal street gang” constitutes a public nuisance, the court may: (a) enter an order to enjoin gang members from engaging in organized criminal activities, and, (b) to include in its order “reasonable requirements to prevent *the use of the place* for organized criminal activity”. In addition to civil penalties, last session, the legislature added a Class A misdemeanor offense category for gang members who violate the injunction.

Texas Nuisance Abatement Laws have been used primarily against individuals for property closures. Until recently, no nuisance abatement cases in Texas had been brought against a “combination” or “criminal street gang”. In July of 1998, the Travis County District Attorney's Office brought the first *Public Nuisance* suit in Texas against members of a criminal street gang, alleging the gang members were continuously dealing drugs and committing acts of violence on several city street corners. The injunction was granted, and included restrictions such as gathering in the targeted area, and use of public phones, cellular phones and pagers in the area. Two of the defendants are appealing the order, which under current law, must be determined within 90 days of the injunction.

## Chapter 125 of the Texas Civil Practices and Remedies Code



### **Chapter 125 of the Texas Civil Practices and Remedies Code**

sets out the procedures for the abatement of common and public nuisances. The definition of a common nuisance, as set out in **Section 125.001** of this chapter, was amended by SB 642, enacted this past session. Under this section, a person maintains a common nuisance if that person knowingly maintains a place to which persons habitually go for certain enumerated purposes, including for the purpose of engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02 .

**Section 125.002** sets out who may bring an action to abate a common nuisance and where suit may be brought. If the petitioner is successful, the trial court must grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance. The court must also close the premises for one year, unless the defendant or property owner posts a bond in the amount of \$10,000. The following section, **Section 125.003**, sets out the procedure for bringing an action if a condition of the injunctive order or bond is violated.

**Section 125.004** was also amended by SB 642. It provides that proof that an activity described under Section 125.001 frequently occurs on the property is prima facie evidence that the property's proprietor knowingly permitted the activity. Also, evidence that persons have been convicted of such offenses occurring on that property is admissible to show such knowledge. Evidence of the place's general reputation may be admitted as well.

**Section 125.021** provides that the habitual use or threatened or contemplated habitual use of any place for certain enumerated activities, including engaging in organized criminal activity as a member of a combination as described by Section 71.02 , is a public nuisance. (This section was amended twice in 1995. There is some conflict, as while the earlier enactment included among the barred activities engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02, the later amendment struck the reference to a criminal street gang. However, Subchapter D of this same chapter, discussed below, deals specifically with nuisances and street gangs.)

**Subchapter C** addresses additional nuisance remedies.



**Section 125.041** was amended several times during the 74th Legislative Session, resulting in two such sections being encoded. Section 124.041, as enacted and amended by the earlier enactments, defines a public nuisance as a place where one or more of enumerated acts occur on a regular basis, including engaging in organized criminal activity as a member of a combination as described by Section 71.02. Another version of this same section, as set out in a later enactment, defines a common nuisance as a nuisance described in Section 125.001 and a public nuisance as one described in Section 125.021.

Under **Section 125.042**, a set percentage of voters of an election district containing or adjacent to a public nuisance can request that certain public officials hold a meeting concerning complaints about that nuisance. **Section 124.043** sets out the notice requirements for such a meeting and **Section 125.044** provides how the findings from such meeting may be used to initiate a proceeding against the place in question. **Sections 125.045** and **125.046** contain various remedies that may be imposed following judicial proceedings, including the setting of a bond, allowing the political subdivision to discontinue utility services to the property, and, in the case of multi-unit residential property, appointing a receiver to manage the property.

**Subchapter D** of Chapter 125 (originally enacted by the legislature in 1993 and reenacted, without apparent change, in 1995), is entitled "Membership in Criminal Street Gang." **Section 125.061** provides that in this subchapter, "combination" and "criminal street gang" have the meanings assigned by Section 71.01. Under **Section 125.062**, a combination or criminal street gang that continuously or regularly associates in organized criminal activities as described by Section 71.02 of Penal Code is a public nuisance, while **Section**

**125.063** declares that the habitual use of a place for engaging in an organized criminal activity as described in Section 71.02 is a public nuisance.



**Section 125.064** permits a Texas resident, the attorney general, or a district, county, or city attorney to sue to enjoin a public nuisance under this subchapter. Any person habitually engaging in organized criminal **activity as a member of a combination or criminal street gang may be made a defendant, as may the person owning or maintaining the property. If the suit is brought by a resident, the resident is not required to show personal injury.**

Under **Section 125.065**, if a court finds that:

- a combination or criminal street gang constitutes a public nuisance, the court may enter an order enjoining a defendant in the suit from engaging in the organized criminal activities of the combination or gang; or
- a place is habitually used in a manner that constitutes a public nuisance, the court may include in its order reasonable requirements to prevent the use of the place for organized criminal activity.

The following section, **Section 125.066**, provides that violation of a court injunction under this subchapter may be punished by a fine of not less than \$100 or more than \$1 0,000, confinement in jail for term of not less than 10 or more than 30 days, or both. Under **Section 125.067**, a person is barred from engaging in the enjoined activity pending trial or appeal. This section also sets out the period within which a trial must be held on the merits of a temporary injunction or an appellate court must rule on an appeal. **Section 125.068** allows a court to award the prevailing party reasonable attorney's fees and costs.

**Section 125.069** provides that in an action brought under this subchapter, proof that organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02, is frequently committed at a place or proof that a place is frequently used for engaging in organized criminal activity by a member of a combination or a criminal street gang as described by Section 71.02 is prima facie evidence that the proprietor knowingly permitted the act, unless the act constitutes conspiring to commit an offense as described by Section 71.02.

## **I. C. Recommendations**

- 1. Develop and fund adult and youth corrections, parole, and probation programs and policies aimed at reducing gang activity.**
  - a. Support increased funding to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID) Security Threat Group Management Office (STGMO).**

The following appropriations has been requested by TDCJ in their FY 2000-2001 Legislative Appropriations Request:

The TDCJ has requested \$1 million for the STGMO in their Legislative Appropriations Request for the next biennium. This amount will support the existing numbers of FTE's in the STGMO, as well as provide for ten additional employees.

*Fiscal Impact: The committee defers to the Senate Finance Committee in determining the appropriate level of funding for the above referenced appropriations request.*

In order to better track the increasing number of prison gang members and gang-related activity, and to more effectively relay information to outside criminal justice agencies, TDCJ will require additional resources.

- b. Support increased funding to TYC facilities and programs to address gang-related behavior, and severely aggressive and/or assaultive youth.**

TYC must maintain control over its facilities in order to ensure the safety of youth and staff at all times. Appropriate resources are required to reduce assaults by more aggressive youth against TYC staff and other students, reduce the opportunity for escapes, reduce destruction of state property and enhance public protection. With the increased aggressive and gang-related behavior of many youth, TYC must have the ability to separate certain youth from the general population. Additionally, TYC should provide a program to safely manage and treat the behavior of severely aggressive/assaultive youth in a self-contained unit.

The following is represented in the FY 2000-2001 TYC Legislative Appropriation Request :

- an increase in the number of Juvenile Correctional Officers by 362; (estimated increase \$14 million)
- expansion of the McLennan County State Juvenile Correctional Facility by 320, or possibly 352 single cell beds (estimated cost is \$24.8 million for 352 beds ); and,
- Aggressive Behavior Management Program at McLennan County State School (estimated cost \$2.4 million)

*Fiscal Impact: The Committee defers to the Senate Finance Committee in determining the appropriate level of funding for the above referenced appropriations request.*

- c. TYC should adopt policies, in accordance with the *Morales v. Turman* Settlement Agreement of 1984, to allow reasonable restrictions on mail correspondence, when the restrictions are rationally related to ensuring the safety and security of juvenile facilities.**

TYC has recently imposed a moratorium on all mail correspondence between youth in residential facilities, and between these youth and adult inmates incarcerated in jails and prisons (other than family members). This moratorium was imposed over concern that unrest in two TYC facilities was coordinated through mail correspondence between prison and institutional gang members. The *Morales v. Turman* Settlement Agreement of 1984 generally provides for unrestricted and uncensored mail correspondence for youth, with allowances for reasonable regulations regarding contraband, but not at the risk of institutional security and order.

*No fiscal impact.*

- d. Amend Section 38.06, Subsections (a) and (c), Penal Code, to increase the offense of escape by high-risk juvenile inmates from a Class A misdemeanor to a 3<sup>rd</sup> degree felony.**

Currently, Sec. 38.06, Penal Code, makes it a 3<sup>rd</sup> degree felony for an adult felon who escapes from custody. However, for juvenile escapees who are alleged or adjudicated to have committed a felony offense, the offense is a Class A misdemeanor (unless to effect escape the youth causes bodily injury or serious bodily injury or uses or threatens to use a deadly weapon). This amendment would place the offense of escape by high-risk juvenile inmates at the same level of severity as the escape of high-risk adult inmates.

*No fiscal impact.*

- e. The Texas Department of Criminal Justice should develop and implement parole policies aimed at identifying, monitoring, and requiring parolees who are confirmed gang members to be placed on Intensive Supervision Caseloads, as well as request the Board of Pardons and Parole to impose special conditions to restrict participation in any gang activity.**

Recently, the TDCJ Parole Division has developed a draft proposal aimed at addressing gang-affiliated parolees. The Department and the Board of Criminal Justice should adopt and implement a statewide coordinated plan to more closely monitor the activities of these releasees. The plan should include networking with law enforcement entities to facilitate communication and mutual awareness of gang trends, sharing of information between the Institutional Division, DPS, local law enforcement and parole officials. In addition, the Board of Pardons and Parole should develop specific policy relating to special conditions to be placed on parolees who are confirmed gang members.

*No fiscal impact.*

**f. Require specialized training for parole officers and probation officers who have gang supervision caseloads.**

All parole and probation officers who have direct contact with releasees identified as being affiliated with a criminal gang, should obtain annual specialized gang awareness training in order to better monitor the releasee.

**g. Support an increase in the availability of probation and parole gang intervention programs.**

Although some County Community Corrections Departments and Parole Day Resource Centers offer specific gang intervention programs, there are areas of the state with chronic gang problems which offer no support programs to probationers and parolees. Harris County and the City of Houston have developed a Gang Offender Probation Program designed to protect the community, reduce recidivism among gang offenders and improve their ability to rehabilitate. The program requires no additional commitment of resources, and is an example of improved coordination and cooperation between criminal justice agencies. Also, the Parole Division should assess current and future Day Resource Center programs and other intervention programs to include a greater focus on gang-related problems and report the status of these programs to the legislature by January 1, 1999.

**h. Encourage judges to place restrictions on gang involvement/association as a condition of probation and specifically to allow for reasonable home searches by probation officers when accompanied by law enforcement.**

Juvenile court judges have the authority to impose restrictions on juveniles who have been placed on probation. Prohibiting gang involvement is a lawful condition of probation and also allows juvenile probation officers the authority to search a probationers home for signs of gang involvement. The Boston Strategy to Reduce Youth Violence credits these type of probation conditions with helping to reduce the number of gang-related youth homicides in Boston in recent years. Once a delinquent youth has been identified as being involved in a criminal street gang, juvenile court judges should be encouraged to order these youth to abstain from any gang involvement or association as a condition of probation.

**2. Closely monitor the appeal of the gang injunction order issued in Travis County to determine if any clarification or expansion is needed to Chapter 125, Texas Civil Practice and Remedies Code.**

The appellate court is expected to rule on this appeal in November of 1998 and will constitute the only case law on this statute in Texas. However, if the court upholds the lower court order, the defendants may appeal the case to the Supreme Court of Texas, thus delaying any court guidance in drafting legislation. However, since an appellate court ruling is eminent, specific statutory amendments are not recommended at this time.

In the absence of case law, several clarifying amendments have been discussed. Those include: a clearer definition of “place” in Chapter 125.065 (b); allowing the court to enter “reasonable requirements” on members of a street gang from engaging in organized criminal activities in Chapter 125.065 (a); and, amending the time requirements mandated for appeals and how that coincides with the jury trial process in Chapter 125.022 (f).

**3. The Office of Attorney General should designate specialized prosecutors to assist local prosecutors and law enforcement in the prosecution of organized crime under Chapter 71, Penal Code, particularly in small, rural counties.**

Chapter 71 of the Texas Penal Code provides for the prosecution of organized crime against a “Combination” or “Criminal Street Gang”. To date, this offense has not been widely used by prosecutors in Texas. The Financial Crimes and Specialized Prosecution Division of the Office of Attorney General (OAG) has not specifically focused on assisting local prosecutors in organized crime cases, but rather has focused its efforts on assisting local jurisdictions in nuisance abatement civil prosecution cases. According to Texas law, the Office of Attorney General must be requested to assist in the prosecution of cases by a local jurisdiction. The 1997 OAG gang report, “An Overview”, found that criminal street gangs are becoming more of a problem in smaller, suburban and rural communities. Because gangs have not been a phenomenon in these areas in the past, and typically smaller counties do not have large, specially trained staff, prosecutors may not have the necessary tools available to them to address the gang problem in their area.

*I. D. Address the increasing gang problem in Texas including consideration of Criminal Information Systems.*

- 1. Legislature should consider adopting uniform policies, procedures, and definitions which would regulate a contemplated statewide gang intelligence database as well as existing local criminal intelligence systems related to criminal street gangs.**

**Introduction**

Fundamentally, our society is based on the notion that an individual has a right to privacy. Thus, collecting and maintaining intelligence information on individuals requires special treatment. Specifically, in developing a database where intelligence information is collected and maintained, whether at the local or state level, information should never be collected about the political, religious or social views, associations or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity. No organization should be monitored or entered as part of a criminal intelligence database without this crime predicate determination. Moreover, individuals must demonstrate a potential for criminal conduct and display specific conduct and characteristics which tend to connect them to the criminal organization before entry into any database.

The need to protect an individual's right to privacy must, however, be balanced with law enforcement's need for tools to investigate, as well as prevent criminal activity. Although a majority of street gangs in Texas is reported to be juvenile delinquent gangs who tend to participate in criminal mischief more often than felony crimes, some street gangs are becoming very sophisticated criminal enterprises. Law enforcement report a growing influence in Texas of the more organized and well-established West Coast and Mid-West gangs (primarily from Los Angeles and Chicago). Many of these criminal gangs are utilizing high-tech tools to expand their criminal enterprises as evidenced by the growing number of gang Web pages on the Internet. These Web pages are used to recruit, display semi-automatic weapons used by gangs, and disseminate information about gang activity and beliefs. Law enforcement also report the need to track the migratory patterns of known criminal gangs in order to better predict and therefore prevent crime.

The committee believes a fair balance between protecting the rights of private citizens and ensuring the public safety can best be achieved by requiring uniform objective policies, guidelines, procedures and definitions for the use of criminal intelligence systems.

Although most Texas law enforcement agencies have internal policies and guidelines which regulate the manner in which gang intelligence is developed, maintained, and destroyed, these policies, as well as definitions of what constitutes a "gang", "gang member", and "gang-relate crime", vary among individual police agencies. Standardizing policies, guidelines and definitions related to gang intelligence systems would ensure proper safeguards are in place to assure that all information retained in a local database, and in turn a statewide collaboration, has relevancy and importance, as well as provide for greater accuracy in estimating the extent of the gang problem in Texas.

Ensuring appropriate and uniform collection, reporting and maintenance of gang intelligence is a law enforcement issue nationwide. A National Institute of Justice (NIJ) Report entitled Gang Crime and Law Enforcement Record Keeping suggests that accurate record keeping on gangs are difficult to obtain because jurisdictions vary in:

- 1.) definitions of what constitutes a gang;
- 2.) practices in recording gang information; and,
- 3.) capabilities in reporting

Specifically, the report concluded that:

*...there was a need to work toward standardizing the meaning of “gangs” around the Nation to improve collection and reporting of national data on gang-related crime and on the basis of accurate data, the effectiveness of multiple intervention strategies could then be better assessed.*

The 1994 National Drug Intelligence Center Street Gang Symposium also recommended uniform street gang-related definitions should be adopted by the federal government and recommended for use throughout the United States. Currently, no uniform definition exists on the national level.

A survey of the top ten largest Texas police agencies revealed that the criteria for identifying gang members varied throughout Texas. The criteria ranged from requiring only one element in the criteria to requiring three elements in order to be designated a gang member. For example, El Paso’s Police Department’s definition may designate an individual as a gang member, but the same person may not necessarily be considered a gang member according to the definition used by the Corpus Christi Police Department or the Dallas Police Department.

Uniform policies related to criminal street gang intelligence should include consideration of the following:

1. Criteria for identification and collection of gang intelligence;
2. Language specifying that the database only be used for investigative purposes by those investigating historical crimes or prevention of future criminal activity;
3. Training and certification required in order for law enforcement officials to use the database;
4. Retention and “renewal” of files after specified periods of time;
5. Treatment of existing gang files
6. Provisions addressing in camera review of gang intelligence files for purposes of disproving gang affiliation;
7. Parental notification of a juvenile identified as a gang member;
8. Creation of a two year monitoring committee; and
9. Technical clarifications to exempt “prison gangs” and make distinctions between “criminal street gangs” and “criminal combinations”.

## **Criteria for Input Into Database**

### **Statement of Purpose and Intent:**

As stated above, although the collection and maintenance of criminal intelligence information is a useful tool to law enforcement in the investigation and prevention of violent and/or gang-related crime, an individual's right to privacy must be protected. This balance can best be achieved by requiring objective criteria be met before admission into the database. The following options represent two potential models for gang intelligence systems:

Option 1 requires a set number of factors be met before an individual could be entered into the database. This option represents a compilation of the elements most commonly used throughout Texas and the nation. This option anticipates DPS creating an entirely new statewide database. The State would have complete control over the administration and use of the database. Practically speaking, the creation of the database would delay its use as DPS will need to build the database as well as train its users. A fiscal note of approximately \$658,000 is attached to this option.

Option 2 is a direct adaptation of the federal standard used in the gang intelligence file of the National Crime Information Center (NCIC). Established compliance monitoring, tested definitions, training strategies, security measures, purging requirements, retention policies and other safeguard provisions are in place. The NCIC database comports to the "reasonable suspicion" or "criminal predicate" standard as required in 28.CFR 23. Upon training, law enforcement would have immediate access to this database. As the NCIC database already exists, there would be no fiscal impact to the State. This option would also alleviate concerns of adding a new database file to the DPS computer system until after the Y2K issue is sufficiently resolved.

### **OPTION 1**

1. Must be a member of a criminal street gang or combination which meets the definition as set forth in Chapter 71 of Texas Code of Criminal Procedure, and
- 2a. Has admitted membership in a criminal street gang or combination which meets the definition as set forth in Chapter 71 of the Texas Code of Criminal Procedure; or,
- 2b. Meets at least two/three/four of the following:
  1. Has been identified by a proven reliable informant, including but not limited to a parent or guardian;
  2. Has been identified by an individual of unknown reliability and that information has been corroborated by independent information;
  3. Has been arrested on two or more occasions for offenses which are consistent with known criminal gang activity;
  4. Has been observed by members of the entering agency to frequent a known gang's area, associate with known gang members, and affects a specific gang's style of dress, tattoos, hand signals, or symbols; or
  5. Has been identified in photographs or other physical evidence as associating with known gang members and affecting that specific gang's style of dress, tattoos, hand signals, or symbols.

*Fiscal Note: The Texas Department of Public Safety estimates a statewide gang file developed and maintained by the DPS ( with a tailored gang member definition ) would cost \$392,964 for the first year of the biennium and \$264,964 for the second year of the biennium. DPS also notes additional fiscal impact could be incurred depending on the level of auditing and training procedures ultimately required by the Legislature.*

## **OPTION 2**

1. Must be a member of a criminal street gang which meets the criteria for and is entered in a gang database; and
- 2a. Has admitted membership in that criminal street gang at the time of his/her arrest or incarceration; or
- 2b. Meets any two of the following:
  1. Has been identified by an individual of proven reliability as a criminal street gang member;
  2. Has been identified by an individual of unknown reliability as a criminal street gang member and that information has been corroborated in significant respects;
  3. Has been observed by members of the entering agency to frequent a known criminal street gang's area, associate with known criminal street gang members, and /or affect that criminal street gang's style of dress, tattoos, hand signals, or symbols;
  4. Has been arrested on more than one occasion with known criminal street gang members for offenses consistent with gang activity;
  5. Has admitted membership in the identified criminal street gang at any time other than arrest or incarceration.

*No fiscal impact.*

### **Purpose and Use of Database**

Pursuant to the Texas Code of Criminal Procedure Art. 61.02, a criminal justice agency may compile criminal information for the purpose of investigating or prosecuting the criminal activities of criminal combinations. Often, these files include information from rumors, suggestions, and beliefs. Moreover, this information has not been tested by a court. While intelligence gathering is an important tool for law enforcement, the potential threats to the privacy of individuals is of grave concern. Thus, well-trained law enforcement intelligence officers limit the dissemination of information from these files. Dissemination is limited not only to law enforcement, but is also regulated amongst their own on "need to know" basis. Experts note that strict guidelines should always be set by law enforcement agencies prior to maintaining intelligence on gang members. Further, intelligence files as it relates to criminal activity is a useful tool in furthering investigations, but should not be commonly used for cause and should never be used to compile statistics or disseminated to agencies outside of the law enforcement arena. (Cuestas, National Violence Prevention Resource Center, 1998)

The very nature of these files requires a higher level of security than that of other law enforcement files. Establishing a security plan which protects an individual's privacy while still being useful to law enforcement is critical. First, intelligence files should not be cross-referenced with other databases or integrated in any other non-intelligence police files. Second, access should be limited on a "need-to-know" basis emphasizing that access is by need and not by position or rank within an organization. With the appropriate training, law enforcement officials should be able to use the information in solving historical crimes as well as prevention of criminal activity which falls within the parameters of a gang's criminal activity. For example, law enforcement should use the database to help investigate and prosecute a gang-motivated auto theft ring as well as developing information to conduct a "bust" of that ring. Officers should not be permitted to use the database during routine traffic stops or curfew checks.

### **Officer Safety**

During the discussion surrounding the database issue, some have advocated that certain gang-related police information could be used to enhance officer safety while on routine patrol or while making a routine traffic stop. Some local police agencies use in-house incident based reporting systems (IBR) to note on internal police department driver license files when a person is a suspected or confirmed gang member. Incident based reports are different from raw intelligence files and are generally separate from an agencies' local gang database, although they may contain some of the same data. Intelligence files should never be used for this purpose. Officers are trained to approach all cars under the theory that the occupant could be dangerous; this practice is taught during basic police officer training. However, in an attempt to enhance officer safety during routine stops, DPS could be required to add an additional field on an individual's criminal history record indicating that an individual had convicted of a gang-related (gang-motivated) offense. Moreover, the field could indicate if the individual was a confirmed member of a prison gang or security threat group. An added benefit would be that such statistics could provide for more accurate estimates of gang-related (gang-motivated) crime.

DPS maintains information on an individual's criminal history in the Texas Crime Information Center (TCIC) file. This arrest and conviction information can be accessed by local law enforcement (in the police car) when requested through the Texas Law Enforcement Telecommunication System (TLETS). Currently, IBR system information cannot be cross-referenced with TLETS system. Frequently, this immediately-available information is a useful and necessary officer safety tool for officers in the field who may need to know pertinent criminal background information on a suspect while making a routine stop.

Currently, the TCIC does not collect or maintain gang-specific criminal information on individuals. The criminal history contains information specific to the offense, but does not include reference as to whether or not the offense was gang-motivated. Modification to include indicators of a gang-related conviction on reporting mechanisms would require a uniform definition of a “gang-related crime” or “gang-motivated crime” and appropriate training by DPS. This definition should not be based on whether or not the individual is a *suspected* gang member from intelligence files, but rather whether there is sufficient evidence that the offense, or alleged offense, was committed in furtherance of gang motives, turf, or ties. Presently, this definition varies among local law enforcement agencies which further complicates the accuracy of estimating the level of gang-related crime in each city. Uniform definitions and reporting would not only enhance officer safety when information is queried from the field, but would also provide for more accurate crime reporting of gang-related activity in Texas.

### **Training of Law Enforcement**

With any intelligence system, compliance monitoring is essential to protect the integrity of the intelligence database and the information stored in the database. DPS already hires compliance monitors who audit and train local police departments in the use of TCIC. According to David Gavin, Asst. Chief of the Crime Records Division, if Texas were to implement a statewide database administered by DPS, these compliance monitors would be trained in the use of the database (DPS or federal) and would then train the appropriate local police department personnel in the use of a new file. Training would include: how to appropriately enter the various fields, level of documentation required to enter intelligence, approval by a supervisor before entering information, etc... Notably, from a training and auditing perspective, choosing the existing NCIC would pose minimal problems or complications for DPS as its monitors are already familiar with the workings of the NCIC.

### **Purging and Retention Requirements**

Another important measure to ensure the integrity of intelligence information is the need for purging instructions. Treating juvenile files differently from adult files would be a philosophy consistent with the manner in which juveniles are treated differently from adults in criminal justice system. A two-year retention period for juvenile intelligence files in cases where the juvenile has had no subsequent police contact would be commensurate with the time period allowed for retention of juvenile arrest records. NCIC currently allows a five-year retention period for adults. NCIC provides for that information retained in the system must be reviewed and validated for continuing compliance with system submission criteria within the retention period. Any information not validated within that period must be purged from the system. Longer retention periods for confirmed members of prison gangs or prison security threat groups would be consistent with accepted standards; an exception exists in the NCIC system for individuals serving time in a corrections system.

### **Treatment of Existing Gang Files**

As discussed above, good public policy dictates the creation of a uniform criteria for submission into a statewide database or the continuation of local databases. This same criteria should be applied to currently existing gang intelligence files or gang books. Consideration should be given to specifying a time period in which the existing files must meet the newly established criteria. In any case, all information retained in the files should be reviewed periodically for reclassification or purge in order to ensure that the file is current, accurate, and relevant to the needs and objectives of law enforcement.

### **In Camera Review**

The establishment of an in camera review available for those wishing to challenge information placed in the database should be considered in policy deliberations. Protecting the identity of confidential informants is essential and therefore raw intelligence information should never be disclosed under any circumstances. However, establishing a secure, in camera review process can be developed in order to allow a citizen who has been incorrectly designated as a gang member the right to challenge this designation without disclosing other confidential information in the file. This review should be the responsibility of the local agency. The following language is suggested:

#### Art. 61.061 Right to Review of Records

(a) Upon the request of any adult person or any person with legal authority to act on behalf of a child, the director or the top administrative authority of an agency maintaining information under this Chapter shall review the information maintained on that adult person or child to determine if there is reasonable cause to believe that the information maintained on the adult person or child is accurate. The reviewing authority shall take the following action upon conclusion of his or her review:

(1) If it determines there is not reasonable cause to believe the information is accurate, it shall order the information destroyed and shall notify the person requesting the destruction of that action;

(2) If it determines there is reasonable cause to believe the information is accurate, it shall notify the requesting party of that determination and their right to judicial review of that determination as provided herein;

(3) If the reviewing authority determines that there is reasonable cause to believe the information is accurate, the requesting party may petition the district court for an in camera review of that determination. The district court has the discretion to reveal to the requesting party the nature of the information to the extent necessary to allow the party to rebut the information. The decision of the district court shall be reviewable on appeal as are other final decisions by the court.

### **Parental Notification**

Chapter 58 of the Texas Family Code addresses issues relative to the collection of records involving juveniles. Adding a provision which would allow for parental notification when a local law enforcement agency or school has designated a juvenile as a gang member would communicate observations by law enforcement or school officials about the child's possible gang affiliation. Specifically, a letter would indicate that the child was exhibiting certain warning signs which associate the child to a street gang and places the child at-risk of possible involvement in criminal activity. Parents who wished to challenge the information could appeal for a review under the in camera provisions.

### **Creation of Monitoring Committee**

If a statewide database is established (either newly created by DPS or an adoption of NCIC), the Legislature should consider creating a statewide oversight committee to monitor, report and make recommendations as to the effectiveness and use of the database. Reports from the committee would provide the Legislature with the appropriate information to make future substantive changes or fiscal appropriations. This special-purpose committee would be appointed for a two-year period.

### **Technical Clarifications**

With respect to regulating collection and submission of information, a distinction needs to be made between a "criminal street gang" and a "criminal combination." According to DPS, lack of this distinction could place unintended constraints on their monitoring of terrorist and organized crime activity. Also, it is not the committee's intent to apply uniform regulations to the collection and maintenance of criminal intelligence information in the TDCJ-ID Violent Offender Program (VOP) database.

## Chapter 61. Code of Criminal Procedure



**Chapter 61** concerns the compilation of information pertaining to a criminal combination. **Article 61.01** provides that "combination" has the meaning assigned by Section 71.01, Penal Code. Under this article, "criminal information" means facts, material, photographs, or data reasonably related to the investigation or prosecution of criminal activity, and "criminal activity" means conduct that is subject to prosecution. "Child," "criminal justice agency," and the "administration of criminal justice" are also defined.

Under **Article 61.02**, a criminal justice agency may compile in any useful manner criminal information into a system for the purpose of investigating or prosecuting the criminal activities of criminal combinations. **Article 61.03** allows such information to be released on request to another criminal justice agency, a court, or a defendant in a criminal proceeding who is entitled to the discovery of the information. However, a local criminal justice agency may not send the information to a statewide database (HB 2874, passed this last session, allows transmittal to a regional data base). A criminal justice agency or court may use the information received only for the administration of criminal justice. A defendant may use information only for a defense in a criminal proceeding.

If the criminal information relates to a child associated with a combination, under **Article 61.04**, the information may be compiled and released regardless of the child's age. A criminal justice agency may release the information to an attorney representing a child in a proceeding under Title 3 of Family Code, if the juvenile court determines the information is material to the proceeding and not privileged under law. The attorney may use the information only for the child's defense.

**Article 61.05** makes it a Class A misdemeanor to use information compiled under this chapter for unauthorized purposes or to release it to a person not entitled to the information. **Article 61.06** requires the information be destroyed after two years if the individual is not charged with criminal activity (HB 2874 suspends these requirements until September 1, 1999).

## NATIONAL CRIME INFORMATION CENTER GANG FILE

### Overview

The Violent Gang and Terrorist Organizations File (VGTOF) was designed to provide identifying information about violent criminal gangs and terrorist organizations and their members to law enforcement personnel. The VGTOF was implemented in October of 1995 as a component of the National Information Center (NCIC). The file acts as a pointer system, facilitating the exchange of information on known criminal gangs and terrorist groups in order to facilitate criminal investigations and warn law enforcement officers of potential danger posed by violent individuals.

The VGTOF consists of two major classifications: the Group Reference Capability (GRC) and Group Member Capability (GMC). Both components are intended to accomplish two major goals of the file: 1.) Promoting the identification of groups and group members, and, 2.) facilitating the exchange of information about these groups and members.

The GRC provides information on terrorists groups and gangs, while the GMC identifies individual members. To be included in the VGTOF, terrorist groups and gangs must meet the definitions ascribed to them by NCIC (National Crime Information Center). Similarly, individuals must meet certain criteria, which positively identify them as members of a terrorist group or gang. After verifying and documenting that these conditions have been met, law enforcement agencies can enter the appropriate data into the VGTOF.

Procedures for entering information into NCIC vary. In some states, a control terminal agency, such as the DPS, maintains the system for the entire state. In others, individual agencies enter their own data. Whatever their state's policy, law enforcement agencies that encounter individuals belonging to an organization meeting the NCIC definition of either a violent gang or terrorist group first must establish a group record.

Agencies entering data into the VGTOF must update the records they establish and delete any information that is no longer valid. Furthermore, agencies must maintain documentation to support every entry, which is important for a number of reasons. An agency that incorrectly identifies an individual by mere association with a gang or terrorist group without concrete proof opens itself up to litigation. NCIC policy requires biannual audits by the FBI's Criminal Justice Information Services Division. During these reviews, auditors check agency records for accuracy and backup documentation.

The VGTOF currently contains entries for hundreds of groups and individuals. As agencies become more familiar with the system, these numbers are expected to grow.

### *GROUP REFERENCE CAPABILITY (GRC)*

### **Criteria for GRC Entry**

Records for two different kinds of organizations, street gangs and terrorist organizations, both of a violent criminal nature, can be entered in the GRC. Classification as a gang or terrorist organization is determined prior to code assignment. In both cases, strict adherence to the entry criteria and documentation of the information establishing the existence of the entry criteria are necessary.

### **GRC Definition of Gang**

For purposes of entry in the GRC, a gang must meet the following criteria:

1. Must be an ongoing organization association, or group of three or more persons, and
2. The group must have a common interest and/or activity characterized by the commission of or involvement in a pattern of criminal activity or delinquent conduct.

**Criminal or Delinquent Conduct** includes narcotics distribution, firearms or explosives violations, murder, extortion, obstruction of justice (including witness intimidation and/or tampering), and any other violent offenses such as assault, threats, burglary, and/or carjacking.

**Delinquent Conduct**, as with the Wanted Person File, is conduct of a juvenile which would be a crime if committed by an adult.

**Criminal Conduct** includes acts committed during incarceration often labeled disruptive which could be punished as crimes.

### **GRC Definition of Terrorist Organization**

Effectively, those criminal activities which affirm entry as a "gang," such as murder, extortion, firearms or explosive offenses, assault, burglary, and similar offenses, also affirm entry of a "terrorist organization." For purposes of entry in the GRC, a **terrorist organization** must meet the following definition:

1. The group must be an ongoing organization, association, or group of three or more persons, and
2. The group must be engaged in conduct or a pattern of conduct which involves the use of force or violence, and
3. The purpose of the group in using violence must be to intimidate or coerce a government, civilian population, or segment thereof, in furtherance of political or social objectives.

### **GRC Restriction on Terrorist Organization Entry**

Entry of a terrorist organization or subgroup is restricted to the smallest identifiable segment, cell, or division, which has been documented to be engaged or **preparing** to engage in qualifying terrorist activity. This restriction is intended to prevent entry of persons who may maintain similar political views to those of a terrorist organization but do not actively support the violent part of that organization.

### **Retention Period for GRC Record**

**Single-Interest** records are retained indefinitely or until removed by the originating agency.

**Multiple-Interest records** are retained indefinitely or until **all** agencies remove their interest in the record.

## ***GROUP MEMBER CAPABILITY GMC***

### **Group Member Capability (GMC)**

Entry of a gang or terrorist organization **member** in the Group Member Capability is predicated on the entry or preexistence of a GRC record for the group to which that member belongs.

Like all NCIC records, probable cause to search or seize is not established by the GMC record standing alone. In any case, arrest of a GMC record subject would not be appropriate based on only his/her group affiliation. **A caveat appears with every GMC record warning against search or seizure established solely on the record.** This does not mean that a GMC record has no relevance to either reasonable suspicion to investigatively detain a record subject (and perform an accompanying frisk pursuant to such a detention), or to arrest a record subject based on probable cause, or to search premises or vehicles based on probable cause.

### **Group Member Capability (GMC) - Criteria for Entry**

The criteria identified to support entry should be documented for purposes of validation and audit. Additionally, each GMC record **MUST** include a notation as to the entry criteria in the Criteria for Entry (ECR) Field. The following criteria must exist with respect to any individual to be entered in the GMC, whether a gang or terrorist organization member:

1. Must be a member of a gang or terrorist organization and subgroup thereof which meets the criteria for and is entered in the GRC; and
- 2a. Has admitted membership in that gang or terrorist organization (and subgroup) at the time of his/her arrest or incarceration; or
- 2b. Meets any two of the following:
  1. Has been identified by an individual of proven reliability as a group member;
  2. Has been identified by an individual of unknown reliability as a group member and that information has been corroborated in significant respects;
  3. Has been observed by members of the entering agency to frequent a known group's area, associate with known group members, and/or affect that group's style of dress, tattoos, hand signals, or symbols;
  4. Has been arrested on more than one occasion with known group members for offenses consistent with group activity;
  - ii Has admitted membership in the identified group at any time other than arrest - or incarceration.

### **GMC Validation**

GMC records are validated according to the same schedule and in the same manner as Wanted Person File records except that the 60-90 day validation is not required. Essentially, all records are validated yearly for accuracy and completeness as to the descriptive information contained therein, and most importantly, as to the validity of continuing the designation of the record subject as a gang or terrorist organization member. If the originating agency determines that the designation was inaccurate **or** that the record subject is no longer an active member of the gang/subgroup, the record should not be validated and should be canceled.

### **All GMC Records begin with Caution**

It is expected that record recipients will treat every VGTOF record subject with appropriate caution. As to both members of criminal gangs and terrorist organizations, entry is based on violent conduct by that identified group. To assist law enforcement officers in being adequately prepared, the term **CAUTION**, the functional equivalent of **Armed and Dangerous**, is printed at the beginning of all GMC records. Any other cautionary information not related to the potential for violence should be placed in the MIS.

### **Retention Period for GMC Records**

GMC records are **retained** 5 years unless removed **by the** originating agency. Only records entered by corrections agencies remain past 5 years.

### **Automatic GMC Purge**

Most GMC records are subject to a purge date which is 5 years from the date of entry. Records may be purged earlier than 5 years by use of a non-system generated date entered with the record in the Date of Purge (DOP) Field. The only records which may exist past the 5 year requirement are records entered by corrections agencies on incarceration of the record subject. In such case, the 5 year maximum runs from the date that the DOP Field is altered to show release of the record subject from incarceration.