



## **ANALYSIS OF THE ATTORNEY GENERAL'S ANNUAL REPORT ON CALGANG FOR 2018**

## **ACKNOWLEDGEMENTS**

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The opinions, findings and recommendations expressed are those of Urban Peace Institute and do not necessarily reflect those of the Attorney General or the Department of Justice.

### **Analysis of the Attorney General's Annual Report on CalGang for 2018**

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# EXECUTIVE SUMMARY

Law enforcement agencies routinely refer to individuals as “known” or “documented” gang members. In California, the documentation of gang allegations is often stored in the CalGang database, a database shared by law enforcement agencies across the state. Being tracked by law enforcement as a gang member infringes on people’s privacy and has real consequences for individuals, both in court rooms and in interactions with law enforcement officers on the street. However, when law enforcement agencies’ gang membership allegations are subject to scrutiny, the basis for these allegations is typically only a few street corner contacts, where officers made cursory conclusions based on a person’s appearance and demeanor. Concerns over the use and accuracy of these allegations has led advocates and policy makers across the nation to investigate how law enforcement agencies make and document gang membership allegations. One of the ways this has happened is through investigations into law enforcement agencies’ gang databases.

California was home to some of the first of these investigations. As a result, the California Legislature passed reforms to shared gang databases in each of its last three legislative sessions. This analysis attempts to measure the effects of these reforms by looking at data published annually by the California Department of Justice on CalGang, California’s only statewide shared gang database.

The findings of this analysis include:

- The total number of records in CalGang has dropped from 201,094 in 2012 to 88,670 in 2018. That is a 56% decrease in six years.
- Reform efforts have not substantially changed the disproportionate rate at which Black and Latino men are labeled as gang members. Black people are overrepresented in CalGang by 362% and Latinos are overrepresented by 168%.
- There are large disparities in the use of CalGang by different law enforcement agencies. While 74% of user agencies (153 agencies) appear to have stopped adding records to CalGang, the top four agencies adding new records in 2018 accounted for 69.3% of all new entries.
- There are also large disparities in the rate at which agencies track minors as gang members or associates in the database. Of the 208 agencies who added records to CalGang, 175 agencies labeled no minors as gang members in the 2018 reporting period. In contrast, 25% of the people whose name and information were added by the Santa Ana Police Department in the same period were minors.

- Law enforcement agencies must notify an individual when the individual's name and information are added to CalGang; however, there is an exemption to this notice requirement if providing notice would compromise an active investigation. In 2018, law enforcement agencies only rarely invoked this exemption, suggesting that most people's names and information were added as the result of routine interactions with law enforcement and not as a result of ongoing investigations into organized gang crime.
- Though the California Legislature granted individuals the right to request removal of their name and information from CalGang, granting this right resulted in few removal requests.

It is UPI's hope that these findings will help guide advocates and policymakers in California and across the nation in designing and implementing reforms to gang databases. If CalGang is representative of other gang databases, there are likely tens of thousands, or hundreds of thousands of individuals in the United States who are not current gang members but are nonetheless documented as such by their local law enforcement agency. As a result, these people will suffer the potentially life altering consequences that can result from law enforcement gang allegations.

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# I. INTRODUCTION

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Over the last several years, the use of gang databases by law enforcement agencies has become a matter of interest and concern across the United States. Gang databases have been the topic of public debate in Providence, Portland, New York, and Boston, among other cities. The states of California, Illinois, Georgia, and Nevada have all debated or enacted legislation regarding gang databases. While gang databases and law enforcement agencies' use of them differ between jurisdictions, agencies have used gang databases to justify severe criminal penalties, target individuals for deportation, deny government benefits, and demonize both criminal offenders and victims. Violence prevention advocates have expressed concern over the negative impact gang databases have on relations between police and communities, and the potential for gang databases to reify gang identities and increase gang cohesion. Criminologists and other empirical researchers have expressed concern over whether databases are accurate enough to be useful. On the other hand, law enforcement officers have described these databases as essential to their work suppressing gangs and investigating crime.

Despite the widespread interest and concerns regarding gang databases, there is little information about them available to the general public. These databases are confidential law enforcement tools and the public has little or no access to the information stored in them. One of the few sources of information available to the public is the *California Attorney General's Annual Report on CalGang* published by the California Department of Justice ("DOJ").<sup>1</sup> CalGang is a shared gang database that contains records from over 200 California law enforcement agencies.<sup>2</sup> The Attorney General's annual report on CalGang includes information such as the total number of records in CalGang and the demographics of the individuals entered into the database. While the Attorney General's report provides valuable data, it provides no analysis. This report provides that analysis.

This report aims to interpret the data found in the *Attorney General's Annual Report on CalGang for 2018* in order to shed light on the following questions:

- Who is in CalGang?
- Who uses CalGang?
- What are the effects of CalGang reforms?

## **Who We Are**

Urban Peace Institute ("UPI") is a national, social justice, non-profit organization working with communities across the country to develop and implement innovative policy, system and practice solutions to reduce violence. Through policy and program development, training, smart justice, and technical assistance, UPI implements effective strategies to achieve safety, and improve overall

community health. Building on 15 years of success as a program of the Advancement Project, UPI launched as an independent organization in August 2015 and is currently operating under the fiscal sponsorship of Community Partners.

## A. WHAT IS CALGANG?

CalGang is a statewide database used voluntarily by local, state, federal, and tribal law enforcement agencies to “enhance officer safety, improve the efficiency of criminal investigations and identify and track gang members.”<sup>3</sup> It was developed by a private contractor in 1997 as proprietary software with funding from the California Office of Criminal Justice Planning.<sup>4</sup> CalGang is a “pointer system” that stores the pertinent information from documents created by individual law enforcement agencies and points users to where to find the original

documents.<sup>5</sup> In that way, it is sometimes described as more like a search engine than a spreadsheet. But unlike a search engine, CalGang stores in the database information such as names and identifying information of suspected gang members, tattoos, vehicles, and associations to other individuals, including individuals not suspected of gang membership.<sup>6</sup> All the collected information about a single individual is referred to as one record. CalGang is part of the GangNet network, which connects CalGang to shared gang databases outside of California.<sup>7</sup>

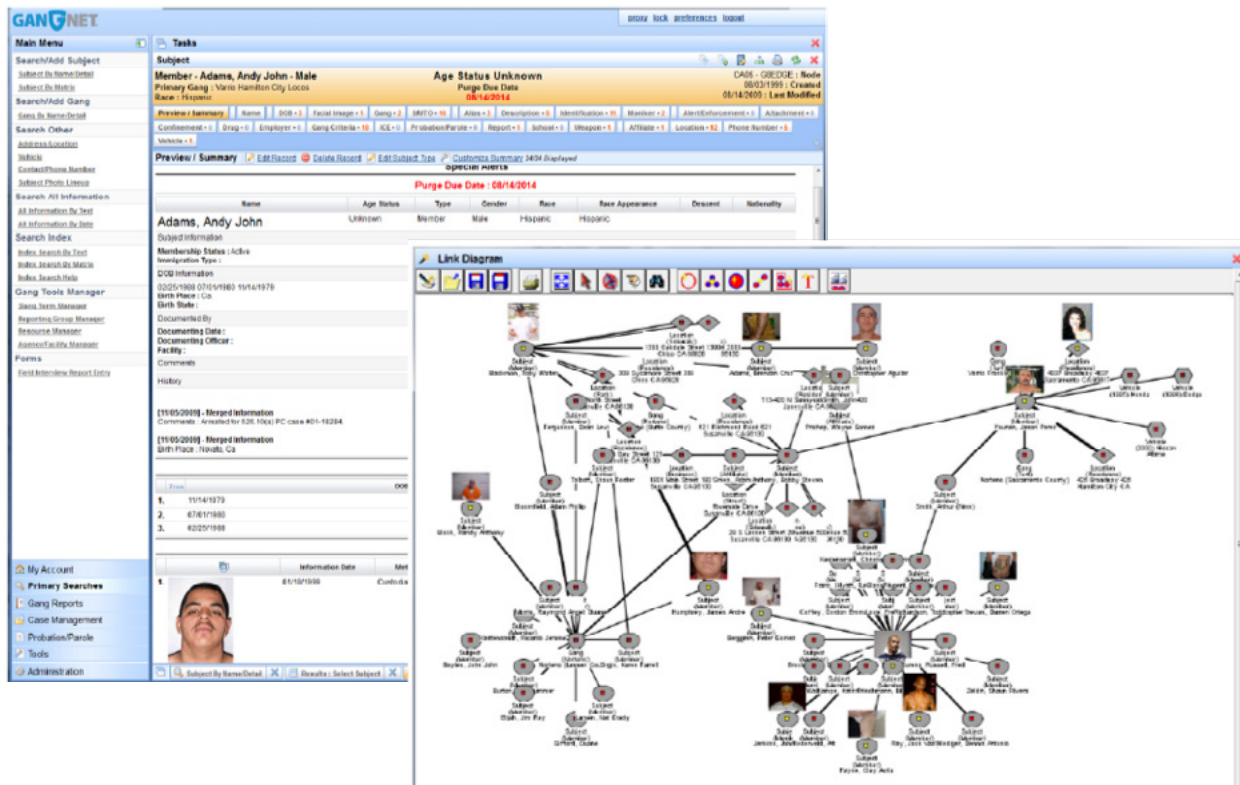


Figure 1: Screenshots of GangNet software circa 2013<sup>8</sup>



CalGang is subject to California Penal Code sections 186.34 through 186.36, to California’s Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities, and to Title 28, Part 23 of the Code of Federal Regulations.<sup>9</sup> In 2018, the DOJ took control of CalGang from the CalGang Executive Board.

Entry of a suspected gang member or associate’s name and information must be supported by reasonable suspicion that the

individual is a member or affiliate of a gang and that the group qualifies as a gang.<sup>10</sup> Under current policy, to designate an individual as a gang member or affiliate in CalGang, a trained officer must identify at least two criteria that indicate gang membership and these criteria must be adequately supported.<sup>11,12</sup> The current criteria used to identify someone as a gang member are listed below. The policy, including criteria, will be revised under new DOJ regulations expected to take effect by January 1, 2020.<sup>13</sup>

<b>Criteria Used to Justify Gang Membership and Affiliation in CalGang<sup>14</sup></b>
Subject has admitted to being a gang member
Subject has been arrested for offenses consistent with usual gang activity
Subject has been seen associating with documented gang members
Subject is known to have gang tattoos
Subject has been identified as a gang member by a reliable informant/source
Subject has been seen wearing gang dress
Subject has been seen frequenting gang areas
Subject has been seen displaying gang symbols and/or hand signs
In-custody classification interview
Subject has been identified as a gang member by an untested informant

*Table 1: Criteria Used to Justify Gang Membership and Affiliation in CalGang*

## B. REFORMS TO CALGANG

In each of its last three sessions, the California State Legislature has enacted statutory reforms to CalGang.<sup>15</sup> Currently, the DOJ is engaged in a rulemaking process to enact new policies and procedures.<sup>16</sup> These reforms were largely driven by two reports. The first was *Tracked and Trapped: Youth of Color, Gang Databases and Gang Injunctions*, a 2012 research paper by the Youth Justice Coalition.<sup>17</sup> This was followed in 2016 by a report by the California State Auditor titled *The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights*.<sup>18</sup>

*Tracked and Trapped* provided the most complete glimpse into CalGang the general public had yet seen. In 2012, the Youth Justice Coalition submitted a public records request to the DOJ requesting information on the number of people added to and removed from CalGang in the prior two years broken down by race, age, gender, and zip code.<sup>19</sup> *Tracked and Trapped* painted an alarming picture of a secret database which had expanded to include hundreds of thousands of individuals without their knowledge, many of whom were children. At the time of the report, CalGang had grown to include over 200,000 people from across the state.<sup>20</sup> Almost 95% of these individuals were male, and over 85% were either Black or Latino.<sup>21</sup> The report also uncovered that children as young as 10 years old were tracked in CalGang, with no notification to them or their parents.<sup>22</sup> At the time of publishing, almost

24,000 youth aged 19 years or younger were tracked in CalGang.<sup>23</sup>

Several years later, a 2016 state audit of CalGang raised more questions about the database. The audit highlighted how CalGang had no meaningful state oversight, despite receiving DOJ funding.<sup>24</sup> The auditor also found the database was riddled with errors.<sup>25</sup> Over 600 individuals were still in CalGang even though they should have been removed after five years, as mandated by federal regulations.<sup>26</sup> Over 250 of those individuals had a removal date set more than 100 years in the future.<sup>27</sup> In addition to concerns of inaccuracy, the auditor highlighted how poor governance of CalGang had “diminished the system’s crime-fighting value,” and that many law enforcement agencies tracked individuals in CalGang without proper supporting evidence or documentation of gang involvement.<sup>28</sup>

As a result of these investigations, California passed several legislative reforms. These reforms refer to “shared gang databases” but are targeted specifically at CalGang since CalGang is the state’s only acknowledged shared gang database.<sup>29</sup> However, because these reforms only address gang databases that are shared between law enforcement agencies, some agencies may maintain local gang databases that are not shared and are therefore outside the scope of these reforms. Also, these reforms do not extend to gang databases used by the state’s prisons, so long as the prisons’ databases are not shared with law enforcement outside of the prison system.<sup>30</sup>

## **1. Senate Bill 458**

In the year after the publication of *Tracked and Trapped*, the Youth Justice Coalition successfully sponsored SB 458. The bill required law enforcement agencies to notify minors and their guardians in writing when a minor's name and information is entered into CalGang, unless there is evidence that the notification would compromise the minor's safety and wellbeing or compromise an active criminal investigation.<sup>31</sup> The law also stated that the minor or his or her guardian could contest the designation as a gang member in writing and request to be removed from CalGang.<sup>32</sup> While this bill was an important first step, it only applied to individuals younger than 18, was difficult to enforce, and did not create an appeal process if the law enforcement agency denied a request to be removed.<sup>33</sup> The state auditor found evidence that many minors whose name and information were added to the shared gang database were either not notified at all, or not given adequate instructions on how to contest their designation as a gang member, associate, or affiliate.<sup>34</sup>

## **2. Assembly Bill 2298**

In 2016, a coalition of organizations that included UPI sponsored AB 2298 to build on SB 458 and expanded due process protections and civil liberties in five ways. First, AB 2298 expanded to adults the requirement that people be notified that they have been entered into CalGang.<sup>35</sup> Prior to this, notification was only required for minors.<sup>36</sup> This notice requirement was not retroactive, meaning those people tracked in CalGang prior to the change in law were not given notice.<sup>37</sup> Second, it established that an individual can ask a law enforcement agency if he or she is labeled in a shared gang database, and the

basis for this designation.<sup>38</sup> Third, it ensured due process by creating a right to appeal a denial of a removal request to the superior court.<sup>39</sup> Fourth, it required all law enforcement agencies to report annually on the database to the DOJ.<sup>40</sup> And, finally, it required the DOJ to publish an annual report on this information.<sup>41</sup>

## **3. Assembly Bill 90**

While AB 2298 was progressing through the legislature, the California State Auditor published a report on CalGang. This report made several recommendations that were not included in AB 2298. To respond to the State Auditor's recommendations, Assemblymember Weber, the author of AB 2298, introduced a follow-up bill during the next legislative session. This bill was AB 90, the Fair and Accurate Gang Database Act of 2017. AB 90 was sponsored by the same coalition of organizations that sponsored AB 2298.

AB 90 shifted administrative and oversight responsibilities of all shared gang databases away from the CalGang Executive Board and vested those responsibilities in the DOJ.<sup>42</sup> It also directed the DOJ to establish policies and procedures for the future use of shared gang databases under the guidance of a technical advisory committee comprised of both government and community-based stakeholders, including people directly impacted by gang profiling.<sup>43</sup> The bill also created accountability mechanisms and auditing procedures to assure better accuracy. It created training requirements for those who access the database. It also placed a moratorium on CalGang starting January 1, 2018 until the Attorney General certified that these training and audit requirements had been met. The bill prohibited law enforcement

from sharing records for the purpose of enforcing federal immigration law.<sup>44</sup> Finally, the bill revised the DOJ's annual reporting requirements and mandated a public comment period following the release of the annual report.<sup>45</sup>

The moratorium imposed by AB 90 was lifted in April, 2018 and the

process for adopting new policies and procedures is currently underway. The first two mandated DOJ reports on CalGang and accompanying data have been published.<sup>46</sup> The second of these reports is the basis for this analysis. New training will not be developed and implemented until after new policies and procedures are adopted.

## II. METHODS AND LIMITATIONS

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The analysis presented here is based on the data released by the DOJ as part of the *Attorney General's Annual Report on CalGang for 2018*.<sup>47</sup> Under California Penal Code section 186.36, the DOJ must publish annual reports which include data about the number of records in CalGang, the number of records added and removed from CalGang, and the results of removal requests.<sup>48</sup> This information is published on the DOJ's website as a short summary report and as a spreadsheet of data that can be broken down by agency and by the demographics of the people whose names and information are included.<sup>49</sup> The report does not provide any data that could identify individuals tracked in the database, nor does the report include details such as which criteria are most frequently used or the context in which information is collected.

The *Attorney General's Annual Report on CalGang for 2018* was published in February, 2019.<sup>50</sup> It is the DOJ's second mandated report. The data capture CalGang usage and figures from November 1, 2017 to October 31, 2018, as reported by 208 California law enforcement agencies.<sup>51</sup> Some comparisons were also made using data released by the DOJ the year prior, which covers November 1, 2016 to October 31, 2017.<sup>52</sup> For both data sets, each reporting agency submitted information on the following categories, which can be disaggregated by race, gender, zip code, and age:

- Number of records in CalGang on the day of reporting;
- Number of people added to CalGang during the reporting period;
- Number of times an agency did not provide notice or documentation that a person was added to CalGang because “doing so would compromise an active criminal investigation;”
- Number of times an agency did not provide notice or documentation that a person was added to CalGang because “doing so would compromise the health or safety of the designated minor;”
- Number of requests for removal from CalGang database received in the reporting period;
- Number of requests for removal that were granted in the reporting period;
- Number of requests for removal that were adjudicated, including their dispositions, in the reporting period;
- Number of people automatically removed from CalGang “due to the expiration of a retention period in the reporting period”—meaning they had no police contacts within the preceding five years that met the criteria for entry;
- Number of people manually removed because of audits.<sup>53</sup>
- UPI additionally categorized all reporting agencies by county to illuminate regional trends.

## Limitations

While the data released by the DOJ provide a valuable look into CalGang, the information is still incomplete. The following limitations should be considered when reading this report:

- Data from the November 1, 2016 to October 31, 2017 reporting period were entered prior to the DOJ assuming oversight responsibilities of CalGang.
- CalGang was placed under a moratorium from January 2018 until April 2018 while an audit was conducted. During the moratorium, no records could be added.
- Law enforcement agencies may use local databases in place of or in addition to CalGang; therefore, an agency that reports few or even no records in CalGang might still engage in gang profiling and may maintain documentation of officers' suspicions of gang membership.
- Further data considerations and limitations are discussed on page five of the DOJ CalGang 2018 report.<sup>54</sup>



### III. ANALYSIS OF 2018 CALGANG DATA

Because the DOJ report provides raw data and summary statistics with no analysis, UPI has created this report to draw meaning from the data in a way that is accessible and useful to individuals and organizations interested in law enforcement gang databases and gang database reform. This analysis is organized around three guiding questions. The first question is, “Who is labeled as a gang member or associate in CalGang?” This first section includes an overview of the gender, age, and race of those tracked in CalGang. The second question is, “Who has been using CalGang?” This second section includes an accounting of the agencies responsible for the greatest number of total records and the greatest number of new entries. The final question is, “What are the effects of CalGang reform efforts?” This third section explores changes that have resulted from legislative reforms, such as notice to individuals and the removal process.

#### A. WHO IS LABELED AS A GANG MEMBER OR ASSOCIATE IN CALGANG?

The DOJ’s 2018 report shows a dramatic decrease in the number of people tracked in CalGang, as compared to the 200,000+ people who were in the database in December 2012 when *Tracked and Trapped* was published. While there has been a decrease of over 50% in the number of individuals tracked

in CalGang, the demographics of these individuals have not substantially changed. Data from November 1, 2017 to October 31, 2018 illustrates that CalGang continues to track minors, as well as individuals over 70 years old. Furthermore, the database continues to disproportionately target Black and Latino men.

Below is a snapshot of the CalGang database, as provided by the DOJ’s 2018 report:<sup>55</sup>

Overview of CalGang (November 1, 2017 - October 31, 2018)	
Total records in CalGang	88,670
Persons added to CalGang	6,007
Total requests for removals	53
Granted requests for removal (by designating law enforcement agency) <sup>56</sup>	11
Petitions for removal adjudicated, including dispositions <sup>57</sup>	3
Records purged from CalGang due to expiration of the retention period <sup>58</sup>	18,587

Times an agency did not provide notice or documentation because of an active criminal investigation	79
Times an agency did not provide notice or documentation because it would compromise the health or safety of a minor	0

Table 2: Overview of CalGang (November 1, 2017 - October 31, 2018)

### 1. Gender

The individuals tracked in CalGang are overwhelmingly male. In the 2018 reporting period, there were 5,473 females and 83,196 males tracked in CalGang; which is 6% female and 94% male. It is important to note that, while CalGang continues to label individuals

as only male or female, many state agencies, including some in law enforcement, have changed data collection practices to be more inclusive of transgender and gender non-conforming individuals.

### 2. Age

While the bulk of people in CalGang are young to middle-aged adults, the database also tracks people who are very young and old. Individuals 18 to 30 years old comprise almost half of all the people whose names and information are in the database, and individuals 31 to 45 years old comprise an additional 39.6%. These numbers are consistent with trends in crime and incarceration rates, but are inconsistent with academic research on gangs that find most gang members are adolescents.<sup>59</sup> More startling is that there are senior citizens over the age of 70 years old included in the database.

Ages	Total	% Total in CalGang
10 to 17	1,024	1.2%
18 to 30	43,799	49.4%
31 to 45	35,140	39.6%
46 to 69	8,648	9.8%
70+	40	< 0.1%

Table 3: Individuals in CalGang by Age (November 1, 2017 - October 31, 2018)

### ***I Minors in CalGang***

There are 1,024 minors ages 10 to 17 tracked in the CalGang database. Of 208 user agencies, only 45 of them (21.6%) have used CalGang to label minors as gang members. Last year, 504 minors were added to the database by 33 agencies. The Los Angeles Police Department contributed the lion's share with 211 new records of youth 17 years old or younger, for a total of 351 youth records. The Santa Ana police department has the second highest number of youth tracked in CalGang, with 132 youth total. Of those added to CalGang last year by Santa Ana Police Department, 35 out of 138 new entries were of youth, about 25% of all new entries.

While published data do not state the exact age of these young people, the age cate-

gory alludes to children as young as 10 years old being labeled as gang members. This was the case in 2012, when 460 youth ages 10 to 14 were tracked in CalGang.<sup>60</sup>

### ***II Seniors***

In addition to young people, there are also seniors labeled as gang members. The DOJ's published data show records for 40 individuals aged 70 years or older, with four of these people added in the 2018 reporting period, two by Los Angeles Police Department, one by San Bernardino Sheriff's Department, and one by Redlands Police Department. Considering the numerous data entry mistakes in birthdates described in the California State Auditor's 2016 report, it is unclear if these are more examples of data entry mistakes or if they are actual records of seniors.<sup>61</sup>

<b>Agency</b>	<b>County</b>	<b>Total Individuals (Age 70+)</b>	<b>Individuals Added (Age 70+)</b>
San Bernardino Sheriff's Department	San Bernardino	11	1
Los Angeles County Sheriff's Department	Los Angeles	10	0
Los Angeles Police Department	Los Angeles	7	2
Riverside County Sheriff's Department	Riverside	3	0
Riverside County Probation Department	Riverside	2	0
San Luis Obispo Sheriff's Department	San Luis Obispo	2	0
Long Beach Police Department	Los Angeles	1	0
Orange Police Department	Orange	1	0
Redlands Police Department	San Bernardino	1	1

San Diego Police Department	San Diego	1	0
Whittier Police Department	Los Angeles	1	0
Total		40	4

Table 4: Individuals Aged Seventy and Over in CalGang (November 1, 2017 – October 31, 2018)

### 3. Racial Disparities

CalGang disproportionately tracks Black and Latino people. While 6.5% of the state’s population identified as Black or African American in 2018, 23.5% of the people whose names and information are in CalGang are identified as Black.<sup>62</sup> People who identify as Latino comprised 39.1% of the state’s population last year, but 65.6% of those tracked

in the database.<sup>63</sup> Black people are overrepresented in CalGang by 362% and Latinos are overrepresented by 168%. These trends continued with new records, as Black and Latino people comprised 25.7% and 62.8% of new records in 2018, respectively. These two groups combined comprised 88.5% of all new records.

Race/Ethnicity	Total Individuals	% of Total Individuals	Individuals Added	% of Individuals Added	% CA Population (July 2018) <sup>64</sup>
Hispanic	58,124	65.6%	3,775	62.8%	39.1%
Black	20,873	23.5%	1,544	25.7%	6.5%
White	5,869	6.6%	521	8.7%	37.2%
Asian	1,083	1.2%	51	0.8%	15.2%
Pacific Islander	314	0.4%	26	0.4%	0.5%
Multiple	228	0.3%	12	0.2%	3.9%
American Indian	67	0.1%	33	0.5%	1.6%

Table 5: Individuals in CalGang by Race (November 1, 2017 – October 31, 2018)

## B. WHO USES CALGANG?

While the DOJ reports that 194 agencies had created records stored in CalGang as of October 31, 2018, only a handful of agencies across the state add substantial numbers of records to the database. The top ten agencies who added information to CalGang in the preceding five years account for 73% of the total records in the database. Los Angeles Police Department, Los Angeles County Sheriff's

Department and San Bernardino Sheriff's Department account for the largest share of records. These three departments account for 51% of total records—almost 45,000. The Los Angeles Police Department alone added 23% of all records in the database. In contrast, other large counties including Alameda, Santa Clara, Sacramento, and San Joaquin entered far fewer records.

Agency	County	Total Records	Percent of Total Records
Los Angeles Police Department	Los Angeles	20,583	23.2%
Los Angeles County Sheriff's Department	Los Angeles	15,062	17.0%
San Bernardino Sheriff's Department	San Bernardino	9,324	10.5%
Fresno County Sheriff's Office	Fresno	5,430	6.1%
San Diego Police Department	San Diego	3,148	3.6%
Riverside County Probation Department	Riverside	3,011	3.4%
Riverside County Sheriff's Department	Riverside	2,670	3.0%
Long Beach Police Department	Los Angeles	2,060	2.3%
Santa Ana Police Department	Orange	1,912	2.2%
Kern County Sheriff's Office	Kern	1,742	2.0%

Table 6: Top Ten Agencies Creating Records in CalGang (November 1, 2017 – October 31, 2018)

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## 1. Geographic Distribution

While CalGang is accessed by agencies from across the state, the database seems to be used predominately in Southern California. 84.2% of the records in CalGang on the day of reporting were entered by agencies based in the southern part of the state. The only county outside of the region that compares in usage is Fresno County with 6,362 records, which comprises about 7.2% of total records in the database.

When combining Fresno with the counties in Southern California—the top six counties using CalGang—these accounted for 91.4% of all records in the database on the day of reporting. Agencies in Los Angeles county entered the lion’s share of records, comprising almost half of all records in CalGang. As discussed above, this is due in large part to Los Angeles Police Department and Los Angeles County Sheriff’s Department.

County	Number of Agencies	Total Records	Percent of Total Records
Los Angeles	50	42,793	48.3%
San Bernardino	15	13,448	15.2%
Riverside	14	6,879	7.8%
Orange	20	6,401	7.2%
Fresno	17	6,362	7.2%
San Diego	10	5,151	5.8%

Table 7: Top Six Counties Creating Records in CalGang (November 1, 2017 – October 31, 2018)

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## 2. Database Use by Agencies Other than Sheriffs and City Police Departments

While most of the 208 agencies with access to CalGang are traditional law enforcement agencies such as police and sheriffs’ departments, the DOJ report shows that many other types of agencies also use the database. These include school and university-based agencies, the California Department

of State Hospitals, and the California Department of Developmental Services. While none of these agencies added new records in the 2018 reporting period, each has previously entered the names and information of individuals who were still tracked in the database as of October 31, 2018.



<b>School-Based Police Departments which have Created Records in CalGang</b>	<b>Total Individuals</b>
Los Angeles Unified School Police	109
San Bernardino School Police	54
Fontana School Police	5
Baldwin Park School Police Department	2

Table 8: School-Based Police Departments which have Created Records in CalGang

<b>College and University Based Agencies which have Created Records in CalGang</b>	<b>Total Individuals</b>
California State University (no specific university specified)	7
El Camino College Police Department	4
University of California - Santa Barbara Police Department	2
State Center Community College Police Department	1

Table 9: College and University Based Agencies which have Created Records in CalGang

<b>Health and Public Service Departments which have Created Records in CalGang</b>	<b>Total Individuals</b>
Sunnyvale Department of Public Services	33
Metro Transit Authority	10
California Department of Developmental Services	4
California Department of State Hospitals	2

Table 10: Health and Public Service Departments which have Created Records on CalGang

## Declining Use of CalGang

Law enforcement agencies' use of CalGang is declining. While there is no publicly available information showing how often CalGang is searched by an agency, the data released by the DOJ do show which agencies entered new information into the database in the preceding five years.<sup>65</sup> In the first year of available reporting data — November 1, 2016 to October 31, 2017 — 76.7% of the

agencies who had added information in the preceding five years did not include any new records that year. The following year, 73.6% of agencies who had added information in the prior five years added no new records. Ten of the agencies who reported records in 2017 reported no records at all in 2018, while only 4 agencies that reported no records in 2017 reported adding new records in 2018.

DOJ Reporting Period	Number of Agencies that Added Records to CalGang	Number of Agencies that Added No New Records	Agencies with No New Records as % of Total Agencies
2017	214	164	76.6%
2018	208	153	73.6%

Table 11: Number of Agencies That Stopped Creating Records in CalGang

Of those who continued to add new records in the 2018 reporting period, the majority added less than 50 names.

Individuals Added	# of Agencies	% of Agencies
No individuals added	153	73.6%
1-15 individuals added	25	12.0%
16-50 individuals added	15	7.2%
51-100 individuals added	6	2.9%
101-200 individuals added	5	2.4%
200+ individuals added	4	1.9%

Table 12: Number of Agencies Creating Records in CalGang (Nov. 1, 2017 to Oct. 31, 2018)

While most agencies stopped entering records into CalGang sometime before November 1, 2017, a handful continue to use CalGang heavily. In the 2018 reporting period, four agencies were responsible for 69.3% of the 6,007 new records. These agencies are Los

Angeles Police Department (1,802 records), San Bernardino Sheriff’s Department (1,511 records), Los Angeles County Sheriff’s Department (558 records), and Riverside County Probation Department (293 records).

<b>Agency</b>	<b>Individuals Added</b>	<b>Total Individuals</b>	<b>% Total Individuals Added</b>
Los Angeles Police Department	1,802	20,583	30.0%
San Bernardino Sheriff’s Department	1,511	9,324	25.2%
Los Angeles County Sheriff’s Department	558	15,062	9.3%
Riverside County Probation Department	293	3,011	4.9%
San Jose Police Department	198	1,200	3.3%
Fresno County Sheriff’s Office	186	5,430	3.1%
San Diego Police Department	171	3,148	2.8%
Riverside County Sheriff’s Department	168	2,670	2.8%
Santa Ana Police Department	138	1,912	2.3%
San Luis Obispo Sheriff’s Department	80	566	1.3%

*Table 13: Top Ten Agencies Creating New Records in CalGang (Nov. 1, 2017 to Oct. 31, 2018)*

## C. WHAT ARE THE EFFECTS OF CALGANG REFORMS?

While changes in database use may be attributed to numerous causes in addition to legislative reforms, there can be no question as to whether these reforms have had an impact. The moratorium imposed by AB 90 entirely shut down the database for nearly four months. UPI was told by one agency that they stopped adding juveniles altogether because of SB 458. The DOJ and law enforcement agencies manually removed 3,212 records in

the 2018 reporting period because there was some problem with the record. Less clear, however, is the effect of public scrutiny and the impact of notice and removal requests on the overall use or accuracy of CalGang. While the exact impact of these and other legislative reforms is not measurable using publicly available data, we can draw some insight into the effects of reforms.

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### 1. Notice

One of the important standards established by SB 458 and AB 2298 is the requirement that a law enforcement agency notify an individual in writing if the individual's name and information are added to CalGang.<sup>66</sup> This notice requirement took effect on January 1, 2014 for juveniles and January 1, 2017 for adults. This notice is not retroactive, meaning no notice was given to juveniles who were already tracked in the database before January 1, 2014 or to adults who were already tracked in the database before January 1, 2017.<sup>67</sup> While the number of individuals whose names and information were entered into the database prior to the effective dates of the notice requirement cannot be determined precisely, UPI estimates that around 85-90% of the people currently tracked in CalGang were never provided notice.<sup>68</sup> To address the fact that many people in the database will not have received notice, legislative reforms require law enforcement agencies to respond to a written inquiry by an individual asking if his or her name and information is in the database and to provide the basis for the designation, if applicable.<sup>69</sup>

While legislative reforms require written notification and inquiry replies, the Legislature also created two exemptions to the requirement. Law enforcement agencies do not need to notify an individual or reply to an inquiry if doing so would compromise an active criminal investigation or if it would compromise the safety and wellbeing of a minor.<sup>70</sup> The latter exemption has not been used at all in the last two years, and very few agencies have used the active criminal investigation exemption.

Of the 6,007 people whose names and information were added to CalGang in the reporting period, only 79 people (1.3%) were not notified because notice might compromise an active investigation. Agencies in San Diego county, however, account for 57% of all criminal investigation exemptions used during the reporting period. In communications with an investigative reporter, a representative for the San Diego Police Department stated that the department believes that "several valid gang members were erroneously purged," and that the department believed it was not

required to provide notice to these people when re-entered “since this was not a new file entry.”<sup>71</sup> Furthermore, according to the department representative, because CalGang “did not have a specific category to classify these one-time exceptions... [the department] elected to capture this information in the active investigation category.”<sup>72</sup> It is

currently unknown if this is the same reason for the unusually high use of the active investigation exemption by other law enforcement agencies in San Diego County. However, it is notable that all of these agencies are part of the same CalGang “node,” which is managed by the San Diego Police Department.<sup>73</sup>

Agency	County	Individuals Added	Active Investigation Exemption	Exemptions as % of Individuals Added
San Diego Police Department	San Diego	171	27	15.8%
Escondido Police Department	San Diego	43	13	30.2%
Riverside County Probation Department	Riverside	293	9	3.1%
Riverside County Sheriff’s Department	Riverside	168	9	5.4%
Los Angeles Police Department	Los Angeles	1802	7	0.4%
El Cajon Police Department	San Diego	4	3	75.0%
San Bernardino Sheriff’s Department	San Bernardino	1511	3	0.2%
Los Angeles County Sheriff’s Department	Los Angeles	558	2	0.4%
National City Police Department	San Diego	26	2	7.7%
San Jose Police Department	Santa Clara	198	2	1.0%
Santa Clara Police Department	Santa Clara	11	2	18.2%

Table 14: Agencies Using Active Investigation Exemption (Nov 1, 2017 to Oct 31, 2018)

## 2. Removals

A core component of AB 2298 was the opportunity for people to request removal of their names and information from CalGang. There are two forums for these requests. First, an individual may request removal directly from the agency that added him or her to the database. This is an administrative request. Second, if the administrative request is denied, an individual may then petition the California Superior Court to reverse the administrative decision and order the agency to remove the individual's record. Though people are now notified of their right to request removal when they receive notice of entry, very few people are taking advantage of that right.

From November 1, 2017 to October 31, 2018, only 53 people made administrative requests to have their names and information removed from CalGang. The top two agencies

receiving requests were the San Bernardino Sheriff's Department and the Los Angeles Police Department, which received 18 and 15 requests respectively. Requests to those two agencies combined represent 62% of all removal requests in the state. Of those, San Bernardino granted three of the eighteen removal requests, and Los Angeles Police Department denied all fifteen. Statewide, 21% of requests resulted in removal.

During this same time, there were three petitions made to the Superior Court to reverse denials of removal requests. Two were made of the San Diego Police Department and were both denied. One of those denials is currently under review by the California Court of Appeal.<sup>74</sup> The third petition was made to Fullerton Police Department and settled out of court, so it was neither approved nor denied.<sup>75</sup>

Agency	Administrative Requests	Removal Granted	% Granted	Court Petition	Petition Approved	Petition Denied
San Bernardino Sheriff's Department	18	3	17%	0	0	0
Los Angeles Police Department	15	0	0%	0	0	0
San Jose Police Department	9	2	22%	0	0	0
Santa Ana Police Department	4	4	100%	0	0	0
Fontana Police Department	1	0	0%	0	0	0
Fullerton Police Department	1	0	0%	1	0	0



Orange County Sheriff's Department	1	1	100%	0	0	0
Orange Police Department	1	1	100%	0	0	0
Riverside County Probation Department	1	0	0%	0	0	0
San Bernardino Police Department	1	0	0%	0	0	0
San Diego Police Department	1	0	0%	2	0	2

Table 15: All CalGang Removal Requests (Nov 1, 2017 to Oct 31, 2018)

### 3. Auto-Purges

CalGang retains records for the maximum length of time allowed under federal law.<sup>76</sup> This is a minimum of five years; however, information may be kept longer if it has been reviewed and validated for an additional retention period by the submitting agency.<sup>77</sup> For CalGang, this means an individual's record will

automatically be purged from the database only if that individual has had no law enforcement contact within the preceding five years that meets the criteria for entry. There were 18,587 records, or 21% of the total records, auto-purged from CalGang during the 2018 reporting period.

### 4. Manual removals

As part of its oversight responsibilities, the DOJ currently conducts audits of CalGang records at least three times a year.<sup>78</sup> If the DOJ finds a problem with a record, they manually remove the record from the database.<sup>79</sup> Removals can result from various problems such as a failure to meet the criteria for entry, a lack of supporting documents, or technical or clerical entry errors.<sup>80</sup>

There were 3,212 manual removals from in the 2018 reporting period. While we do not know the number of records reviewed, nor the frequency with which the DOJ audited any particular agency, the high number of removals in some agencies raises serious questions about the accuracy of their records. For example, 46% of the Santa Clara Sheriff's Department's total records were manually removed.

Since the DOJ does not report whether manually removed records are new or old, the degree to which the number of manual removals indicates current or past errors is unknown. However, the relative number of

manual removals compared to new records is notable. At the same time law enforcement agencies added 6,007 new records to CalGang, the DOJ removed 3,212 records due to errors.

Agency	County	Total Individuals	Individuals Added	Manual Removals
San Bernardino Sheriff's Department	San Bernardino	9,324	1,511	707
Fresno County Sheriff's Office	Fresno	5,430	186	509
Los Angeles County Sheriff's Department	Los Angeles	15,062	558	319
Santa Clara Sheriff's Department	Santa Clara	345	0	291
Modesto Police Department	Stanislaus	615	0	158
Gardena Police Department	Los Angeles	573	22	122
Orange County Sheriff's Department	Orange	580	36	105
Riverside County Sheriff's Department	Riverside	2,670	168	96
Riverside County Probation Department	Riverside	3,011	293	76
San Diego Police Department	San Diego	3,148	171	76

Table 16: Top 10 Agencies with Manual Removals (Nov 1, 2017 to Oct 31, 2018)

## IV. IMPLICATIONS AND DISCUSSION

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With only two DOJ reports published so far, both happening during periods of reform implementation, it is difficult to extrapolate trends. However, some conclusions about CalGang and related reforms can be drawn from the data published in the DOJ's 2018 report. Most notably, there has been a dramatic decline in the number of records in CalGang and the number of agencies adding records. This happened even though due process reforms have not been implemented in a way that resulted in substantial numbers of people contesting their designation in the database. In contrast to this sharp decline, the data show that other aspects of the database remain stable. The demographics of those tracked in the database have not substantially changed. Also, there continues to be evidence of the type of data entry errors previously described in the state audit. Other notable findings are that notice of entry into CalGang very rarely risks compromising an active criminal investigation and that there are several non-traditional law enforcement agencies whose use of the database might present unique problems.

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### 1. The total number of individuals tracked in CalGang is declining.

The most significant change in CalGang over the last several years is the decrease in the number of individuals who are tracked in the database. The total number of records in CalGang at the end of 2018 was 88,670<sup>81</sup> compared to 103,813 in 2017,<sup>82</sup> 150,432 in 2015,<sup>83</sup> and 201,094 in 2012.<sup>84</sup> This is a 15% decrease in one year, and a 56% decrease over 6 years.

The reason for this decrease is not obvious. Among the possible explanations are that there are fewer gang members, that erroneous records have been removed, that

the criteria for entry has become more strict, that agencies are applying the criteria for entry more strictly, and that some agencies have decided to use the database less or stop using it all together. It is likely that all of these explanations play some part in the total decrease, though it is currently impossible to measure the relative impact of each.

It remains to be seen whether this trend will continue or whether the total number of records kept in CalGang will level off at some point.

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### 2. CalGang continues to disproportionately track people of color.

Law enforcement agencies include Black and Latino people in the database at rates far exceeding those of White and Asian people. Many in law enforcement argue this dispro-

portionality is objectively consistent with the demographics of gang members. Whether that is true or not, that argument ignores the fact that the disproportionate policing

of Black and Latino people also means that these communities will disproportionately suffer the harms of erroneous inclusion. It also ignores the effect of racial disparities on building trust between law enforcement and communities of color, especially in light of the history of race-based policing. When members of communities of color feel their community is singled out for more aggressive policing through the use of gang databases and other gang suppression tools and strategies, members of these communities are less likely to trust police enough to come forward when they are victims or witnesses to crime. As a result, law enforcement tools like CalGang that disproportionately target people of color can counterproductively damage the effectiveness of the law enforcement agencies that use them.

Additionally, there is evidence that racial profiling continues to exaggerate CalGang's racial disparities. A recent Los Angeles Times investigation describes how Los Angeles

Police Department's Metro Division will target people based on age, gender, and race in order to suppress gangs whose members predominately fit that demographic.<sup>85</sup> According to one Deputy Chief, "If black gangs are involved... metro officers will use traffic violations to stop 'African American males ages 16 to 24 who dress or look like gang members.'"<sup>86</sup> That same Los Angeles Times investigation describes how Los Angeles Police Department's Metro division, in one night, stopped 35 people on pretextual traffic violations -- 25 were Black and 10 were Latino.<sup>87</sup> Based on those stops, officers wrote 27 field interview cards, which are typically used to as the basis for CalGang records.<sup>88</sup>

Even if we ignore the likely influence of implicit bias on who is tracked in CalGang, the use of race as an explicit factor in deciding who law enforcement officers will target for gang suppression will inevitably exaggerate the database's racial disparities.

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### **3. There are significant disparities in agencies' use of CalGang, suggesting that most agencies find the database unnecessary, that agencies are effectively evading database reforms, or both.**

Another of the most significant findings of our analysis is that there are large disparities between agencies with regards to the number of individuals tracked. Of the 208 agencies who have added information to CalGang in the preceding five years, the Los Angeles Police Department, Los Angeles Sheriff's Department and San Bernardino Sheriff's Department alone account for 64.5% of the total number of new records in the database. Meanwhile, 153 agencies have added no records to the database in the 2018 reporting period.

While some of these disparities between agencies are attributable to the number of gang members in each agency's jurisdiction, the fact that so many agencies had previously tracked people as gang members or associates in the system before 2018, but added no new records or few new records in 2018, suggests that some agencies are simply choosing to stop using the database.

This further suggests that most agencies' use of CalGang may not have ever produced a public benefit in the first place. Unless the

number of gang members has radically declined in the jurisdictions that have stopped adding records to the database, one would expect that ending the use of an effective crime-fighting tool would result in an increase in crime. However, there have been no public reports of increases in gang crime attributed to declining use of the database. This suggests CalGang might never have been a necessary crime-fighting tool. This possibility is consistent with the fact that there are no public reports of an increase in gang crime attributable to the

2018 moratorium on the use of the system.

The declining use of CalGang also raises concerns that agencies are instead documenting gang allegations somewhere besides CalGang where there is less oversight and accountability. If agencies are using computer systems within the agency to track suspected gang members without sharing that system with other agencies, then that computer system would not be subject to the notice or reporting requirements or to DOJ audits.

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#### **4. The age of some people tracked in the database continues to suggest errors in the system.**

One of the most widely reported facts of the California State Auditor's 2016 report on CalGang was that there were 42 babies designated as gang members in the database. This was probably not because babies were actually suspected of gang membership, but more likely indicates errors in entering birthdates. There is currently no one under 10 years old reported as a gang member or associate;

however, there are 40 senior citizens over the age of 70 labeled as gang members or associates. While it is possible that law enforcement officers believe that there are dozens of 70 year-olds who are still active gang members, it is more likely that the data continues to be riddled with errors or records are not being removed as their subjects age out of a gang or die.

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#### **5. There are school police departments and agencies other than police and sheriff's departments adding individuals to the database.**

Advocates have raised concerns about the use of CalGang by agencies other than traditional law enforcement. Of particular concern are schools, probation departments, and medical institutions who have added records to the database. Unlike traditional law enforcement agencies, these agencies are not usually tasked with investigating crimes and do not have the same intelligence needs as traditional law enforcement agencies. This is also a concern because it suggests that

these agencies might be betraying their clients' trust and taking adverse action against them. Finally, personnel from these agencies are likely to have less relevant experience and received less training than officers in more traditional law enforcement agencies, and so their suspicion of gang membership may be less accurate.

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## **6. Most individuals added to the database do not appear to be subject to an active investigation.**

Law enforcement agencies are granted considerable discretion in deciding whether notifying someone that his or her name and information has been added to the database would compromise an active criminal investigation. People who do not receive notice have no practical way to challenge the decision to add their name and information. To protect against abuse, the Legislature requires agencies to disclose the number of times they invoke the active investigation exemption. The fact that only about 1% of the people whose names and information were added to CalGang in the 2018 reporting period were

denied notice under this exemption demonstrates that most agencies are showing restraint in exercising their discretion. However, it also suggests that the vast majority of people tracked in the database are not part of an active criminal investigation. While it is possible that some individuals are subject to an active investigation but still received notice because notice would not compromise the investigation, the infrequency with which the active investigation exemption is used seems to refute law enforcement's claim that the people tracked in the database are serious dangers to their communities.

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## **7. The removal process is currently inaccessible and ineffective.**

While legislative reforms created important due process rights by allowing individuals to request their removal from CalGang, the small number of removal requests, and the even smaller number of successful requests, raise concerns about the accessibility and effectiveness of those elements of the reforms. In 2018, over 6,000 people had their names and information added to the database but only 53 of these people made removal requests. The fact that less than 1% of individuals who received notice of their inclusion then requested removal suggests the removal process is either inaccessible, or that individuals who receive notice do not believe a removal request will be effective. The fact that only 11 requests were granted suggests that those who doubt the effectiveness of the removal process might be right. For example, the Los Angeles Police Department, the agency responsible for the highest number of records in CalGang and who received the

second highest number of removal requests, granted no removal requests in 2018.

Because UPI attorneys represented approximately a dozen of the 53 people who requested removal, we have anecdotal evidence of why the removal process is not yet effective. Most of the agencies failed to respond to initial requests for information or provide timely responses for removal requests. The DOJ, despite having added records to CalGang, claims it is not a law enforcement agency and refuses to answer information requests at all. Most local law enforcement agencies had no policy for responding to requests. Most employees attending phones or front desks of police and sheriff stations did not know how to respond to requests or to whom they should refer people. Many people seeking removal were referred to gang unit sergeants, who requested that people come into the station for

interrogation as part of the removal process, which creates a chilling effect that can reduce the number of requests. Furthermore, many agencies chose not to determine whether an individual is, in fact, a gang member, but rather chose to review documentation only for failure to properly follow department policy.

With regards to removal petitions to the Superior Court, UPI attorneys represented the one individual whose name and information were removed in 2018 after petitioning the Superior Court. UPI also consulted with attorneys for the other two petitioners. Like law enforcement agencies, courts were ill-prepared for petitions. Clerks were unsure how to file petitions in their computer systems. Agencies were allowed to submit evi-

dence beyond what was permitted by statute. In one petition in San Diego, the court allowed the police to meet alone with the judge in order to present secret evidence without ever showing it to the petitioner. Though appeals are currently being litigated, there are not yet any published judicial opinions providing guidance to trial courts.

Clearly, for the removal process to have a substantial effect on database accuracy and fairness, more people need to take advantage of the process. This will require both resources to motivate and support individuals whose name and information are wrongly entered and also an improved response from law enforcement agencies and courts receiving removal requests.

# CONCLUSION

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California is continuing to implement reforms to CalGang with the purpose of improving accuracy and fairness. Other cities and states are also looking closely at their gang databases. While some, like Georgia, are moving towards creating new gang databases, many of the cities and states are working to reform databases already in use. Chicago, Providence, Portland, and Nevada are all currently engaged in gang database reform processes or have dissolved their gang database. Calls for reform in New York and Boston are growing.

The data suggest that California's model of gang database reform can have a substantial impact, but more change is needed. Increased attention, transparency, and accountability have corresponded with a substantial pruning of CalGang. These reforms, however, have not produced a substantial change in the demographics of who is included in CalGang, nor has legislation granting due process resulted in substantial numbers of removal requests or subsequent removals from the database. The findings of this analysis suggest that further reforms to CalGang are needed to improve the utilization and effectiveness of the removal process.

While California's reforms continue, it is important to recognize that many of the fears regarding gang database reform have turned out to be unfounded. Due process rights have not undermined law enforcement efforts to combat gang violence. While increased oversight and due process rights may have contributed to some decline in the use of the database, the agencies that used the database most before legislative reforms continue to heavily use CalGang.

With regards to the need for future research, the findings of this analysis point to a need to investigate whether agencies are finding other ways to track gang members in order to evade oversight and reforms. Also, because the DOJ's reported data do not address the sharing of CalGang records with agencies outside of California, this analysis was not able to provide insight into whether the DOJ has successfully ensured that information exchanged with other states and the federal government has not been turned over to federal immigration enforcement agencies. Without any data regarding the sharing of information stored in CalGang, advocates will continue to question the efficacy of the DOJ's efforts to protect undocumented immigrants from unintended consequences that might result from being tracked in CalGang. Finally, and perhaps most importantly, there remains no publicly available research into the necessity or effectiveness of CalGang.

It is our hope that this report and future analyses of CalGang data will provide clarity and specificity to policy discussions about gang databases and will guide future research and reform efforts in California and elsewhere around the nation.



# ENDNOTES

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- <sup>1</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General's Annual Report on CalGang for 2018 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2018); California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General's Annual Report on CalGang for 2017 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2017).
- <sup>2</sup> Ibid.
- <sup>3</sup> "CalGang," California Department of Justice, accessed July 31, 2019, <https://oag.ca.gov/calgang>.
- <sup>4</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 9.
- <sup>5</sup> Id., 11.
- <sup>6</sup> Ibid.
- <sup>7</sup> Id., 9.
- <sup>8</sup> SRA International, Inc. White Paper: GangNet Software (SRA International Inc., 2013), 3,9, on file at UPI.
- <sup>9</sup> California Penal Code sections 186.34 - 186.36 (2019).
- <sup>10</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 9.
- <sup>11</sup> Two criteria are not required if someone admits to gang membership during a custody classification interview.
- <sup>12</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 15.
- <sup>13</sup> California Department of Justice, Notice of Proposed Rulemaking Action (California Department of Justice, <https://oag.ca.gov/sites/all/files/agweb/pdfs/bciis/ch7-5-notice-proposed-rulemaking.pdf?>, 2019); California Penal Code § 186.36 (2019).
- <sup>14</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 15.
- <sup>15</sup> California's legislative sessions are two-year sessions. Reforms were enacted in the following legislation: Senate Bill 458 (Statutes 2013, chapter 797); Assembly Bill 2298 (Statutes 2016, chapter 752); Assembly Bill 90 (Statutes 2017, chapter 695).
- <sup>16</sup> California Department of Justice, Notice of Proposed Rulemaking Action (California Department of Justice, <https://oag.ca.gov/sites/all/files/agweb/pdfs/bciis/ch7-5-notice-proposed-rulemaking.pdf?>, 2019); California Penal Code § 186.36 (2019).
- <sup>17</sup> Youth Justice Coalition's RealSearch Action Research Center, Tracked and Trapped: Youth of Color, Gang Databases, and Gang Injunctions (Youth Justice Coalition, <https://www.youth4justice.org/wp-content/uploads/2012/12/TrackedandTrapped.pdf>, 2012).
- <sup>18</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016).

- <sup>19</sup> Youth Justice Coalition’s RealSearch Action Research Center, Tracked and Trapped: Youth of Color, Gang Databases, and Gang Injunctions (Youth Justice Coalition, <https://www.youth4justice.org/wp-content/uploads/2012/12/TrackedandTrapped.pdf>, 2012), 8.
- <sup>20</sup> Ibid.
- <sup>21</sup> Ibid.
- <sup>22</sup> Id., 11.
- <sup>23</sup> Ibid.
- <sup>24</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals’ Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 1-4.
- <sup>25</sup> Ibid.
- <sup>26</sup> Id., 3.
- <sup>27</sup> Ibid.
- <sup>28</sup> Id., 1.
- <sup>29</sup> Senate Bill 458 (Statutes 2013, chapter 797); Assembly Bill 2298 (Statutes 2016, chapter 752); Assembly Bill 90 (Statutes 2017, chapter 695).
- <sup>30</sup> California Penal Code section 186.34 (2019).
- <sup>31</sup> Senate Bill 458 (Statutes 2013, chapter 797).
- <sup>32</sup> Ibid.
- <sup>33</sup> Ibid.
- <sup>34</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals’ Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 48-52.
- <sup>35</sup> Assembly Bill 2298 (Statutes 2016, chapter 752).
- <sup>36</sup> Senate Bill 458 (Statutes 2013, chapter 797).
- <sup>37</sup> Assembly Bill 2298 (Statutes 2016, chapter 752).  
Edmund G. Brown, Jr., Signing Statement ([https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/AB\\_2298\\_Signing\\_Message.pdf](https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/AB_2298_Signing_Message.pdf), 2016).
- <sup>38</sup> Assembly Bill 2298 (Statutes 2016, chapter 752).
- <sup>39</sup> Ibid.
- <sup>40</sup> Ibid.
- <sup>41</sup> Ibid.
- <sup>42</sup> Assembly Bill 90 (Statutes 2017, chapter 695).
- <sup>43</sup> Ibid.
- <sup>44</sup> Ibid.
- <sup>45</sup> Ibid.
- <sup>46</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2018 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2018); California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2017 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2017).
- <sup>47</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2018 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2018).

- <sup>48</sup> California Penal Code section 186.36 (2019).
- <sup>49</sup> “CalGang Reports,” California Department of Justice, accessed July 31, 2019, <https://oag.ca.gov/calgang/reports>.
- <sup>50</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2018 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2018).
- <sup>51</sup> *Id.*, 5.
- <sup>52</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2017 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2017).
- <sup>53</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2018 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2018); California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2017 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2017).
- <sup>54</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General’s Annual Report on CalGang for 2018 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2018), 5.
- <sup>55</sup> *Id.*, 2.
- <sup>56</sup> This refers to individuals who made a request to remove their record directly to a law enforcement agency and the agency granted that request.
- <sup>57</sup> This refers to individuals whose removal requests to a law enforcement agency were denied but who then petitioned the Superior Court to reverse the agencies’ denials.
- <sup>58</sup> This refers to individuals who were automatically removed from the database without a request because they had no contacts with law enforcement agencies that met the criteria for entry in the preceding five years.
- <sup>59</sup> Todd Hiestand, Gang Membership, Duration, and Desistance: Empirical Literature Review (California Department of Justice, 2019), 20-21.
- <sup>60</sup> Youth Justice Coalition’s RealSearch Action Research Center, Tracked and Trapped: Youth of Color, Gang Databases, and Gang Injunctions (Youth Justice Coalition, <https://www.youth4justice.org/wp-content/uploads/2012/12/TrackedandTrapped.pdf>, 2012), 11.
- <sup>61</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals’ Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 39.
- <sup>62</sup> “Quick Facts: California,” United States Census Bureau, last modified July 1, 2018, accessed April 3, 2019, <https://www.census.gov/quickfacts/ca>.
- <sup>63</sup> *Ibid.*
- <sup>64</sup> *Ibid.*
- <sup>65</sup> Because an individual’s record is automatically purged from CalGang if there is no new information entered in the preceding five years, every agency listed in the DOJ as having created a CalGang record will have entered new information regarding at least one individual in the five years prior to reporting.
- <sup>66</sup> Senate Bill 458 (Statutes 2013, chapter 797); Assembly Bill 2298 (Statutes 2016, chapter 752).
- <sup>67</sup> Senate Bill 458 (Statutes 2013, chapter 797); Assembly Bill 2298 (Statutes 2016, chapter 752); Edmund G. Brown, Jr., Signing Statement ([https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/AB\\_2298\\_Signing\\_Message.pdf](https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/AB_2298_Signing_Message.pdf), 2016).
- <sup>68</sup> This estimate is calculated by subtracting the 5,154 newly added records described in the 2017 report and the 6,007 newly added records described in the 2018 report from the 88,670 total records described in the 2018 report and then dividing by 88,670.
- <sup>69</sup> California Penal Code § 186.34 (2019).
- <sup>70</sup> *Ibid.* San Diego Police Department

- <sup>71</sup> Correspondence provided by freelance reporter Kelly Davis and on file at UPI.
- <sup>72</sup> Ibid.
- <sup>73</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 10.
- <sup>74</sup> Tyrone Simmons v. City of San Diego, et al., Superior Court of San Diego County, 2018, No. 37-2018-00001190-CL-PT-CTL, (D074845, app. pending).
- <sup>75</sup> Jeovany Salgado v. Fullerton Police Department, Superior Court of Orange County, 2018, No. 30-2018-00994181-CL-JR-CJC.
- <sup>76</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 14-15.
- Tyrone Simmons v. City of San Diego, et al., Superior Court of San Diego County, 2018, No. 37-2018-00001190-CL-PT-CTL, (D074845, app. pending).
- <sup>77</sup> Title 28, Part 23 of the Code of Federal Regulations.
- <sup>78</sup> Correspondence from the Department of Justice CalGang Unit to UPI, on file at UPI.
- <sup>79</sup> Ibid.
- <sup>80</sup> Ibid.
- <sup>81</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General's Annual Report on CalGang for 2018 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2018).
- <sup>82</sup> California Department of Justice Bureau of Criminal Identification and Investigative Services, Attorney General's Annual Report on CalGang for 2017 (Department of Justice, <https://oag.ca.gov/calgang/reports>, 2017).
- <sup>83</sup> Elaine Howle, The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights (California State Auditor, <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>, 2016), 66.
- <sup>84</sup> Youth Justice Coalition's RealSearch Action Research Center, Tracked and Trapped: Youth of Color, Gang Databases, and Gang Injunctions (Youth Justice Coalition, <https://www.youth4justice.org/wp-content/uploads/2012/12/TrackedandTrapped.pdf>, 2012).
- <sup>85</sup> Chang, Cindy, "L.A. Metro cops are in a bind: Avoid racial profiling while also fighting crime." Los Angeles Times, April 21, 2019.
- <sup>86</sup> Ibid.
- <sup>87</sup> Ibid.
- <sup>88</sup> Ibid.





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