

# **Evaluation of Gang Databases in Minnesota**

**&**

# **Recommendations for Change**

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## I. INTRODUCTION

The Minnesota Criminal Gang Pointer File database and GangNet database were established by law enforcement agencies as tools to monitor alleged gang members and reduce criminal gang activity. Law enforcement agencies have traditionally used gang databases to ensure public safety in the communities they serve. The need for public safety, however, is best met when the voice of the entire community is heard. Within the Twin Cities, constituents have voiced concerns about the methods used, maintenance, and procedures followed by law enforcement agencies in their use of gang databases in Minnesota. With the current torrent of media coverage surrounding the Metro Gang Strike Force, community trust in gang databases and gang task forces are arguably at an all time low. This is exacerbated by the fact that current statistics show that people of color are substantially over-represented in the Minnesota Criminal Gang Pointer File and GangNet databases. St. Paul community members have raised concerns regarding the scope of the ten-point criteria and the impact it has had, and continues to have, on those who have been mislabeled as gang members or are no longer part of a gang. In response to these community concerns, this report was compiled to highlight the various issues with the implementation, documentation, and use of Minnesota Criminal Gang Pointer File and GangNet databases, and offer recommendations for change. These proposed recommendations will help to balance public safety and community concerns; while improving accountability, reliability, and trust between law enforcement and the communities they seek to serve.

**Part II of this Report** addresses the operational procedures and standards of the Bureau of Criminal Apprehension's (BCA's) Minnesota Criminal Gang Pointer File and Ramsey County Sheriff's Office's GangNet System. In addition, this section will identify general issues with the structure and procedural policies of the Gang Pointer File and GangNet databases.

**Part III of this Report** addresses general issues regarding the Gang Pointer File and GangNet databases, including arguments regarding the subjective nature of the ten-point criteria, community concerns, the appearance of racial profiling, potential collateral consequences, lack of notification, and auditing and purging practices.

**Part IV of this Report** contains recommendations on how to promote a greater level of accountability, reliability, and trust between law enforcement and the communities they serve. These recommendations include: (1) changing and/or re-defining the ten-point criteria; (2) ensuring a meaningful and sustainable mechanism for obtaining community input; (3) ensure greater accountability and oversight of data practices; (4) providing notice and hearing requirements for documented gang members; (5) implementing prevention and/or intervention models; (6) providing public notice of auditing and purging schedules to ensure compliance and consistency; (7) conducting a special audit of the gang databases previously administered by the Metro Gang Strike Force; and (8) determining whether GangNet should remain in existence.

**Part V of this Report** will conclude the findings of this report.

## II. OVERVIEW OF GANG POINTER FILE AND GANGNET

Although there are other criminal justice databases that exist across the state of Minnesota;<sup>1</sup> this report focuses on two databases, the Minnesota Criminal Gang Pointer File (“Gang Pointer File”) and GangNet. First, this report will provide an overview of the legislation authorizing the Gang Pointer File. Next, the report will address the procedures and policies governing the Gang Pointer File. Finally, the report will address potential concerns and areas of inquiry regarding the Gang Pointer File. This method of analysis will also be used in evaluating GangNet.

### A. MINNESOTA CRIMINAL GANG POINTER FILE

#### 1. Structure

In 1927, the Minnesota Legislature created the Minnesota Bureau of Criminal Apprehension (BCA)<sup>2</sup> to “assist peace officers throughout the state in solving local crimes and apprehending criminals.”<sup>3</sup> Currently, the BCA is under the Department of Public Safety.<sup>4</sup> In 1997, the Minnesota Legislature directed the BCA to “administer” and “maintain” a “computerized criminal gang investigative data system”<sup>5</sup> for the purpose of “assisting criminal justice agencies in the investigation and prosecution of criminal activity by gang members.”<sup>6</sup> This data system, called the Minnesota Criminal Gang Pointer File, purposes to “codify subjective information that officers had, in a way that there could be a fair determination” to assess whether or not a person was a gang member involved in criminal activities.<sup>7</sup> As of 2008,

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<sup>1</sup> Examples include: JNet and CrimNet.

<sup>2</sup> Minnesota Department of Public Safety, *History of the Bureau of Criminal Apprehension*, <http://www.bca.state.mn.us/HomePageLinks/Documents/BCA-Hist.html> (last visited Nov. 7, 2009).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup> See Minn. Stat. § 299C.091 (2009).

<sup>6</sup> See generally Minn. Stat. § 299C.091 (2009).

<sup>7</sup> See Mara H. Gottfried, *Database on Gangs: Just How Accurate? Critics Raise Questions About the Secret List, Including Who’s on It*, ST. PAUL PIONEER PRESS, Sept. 20, 2009, at A1 (quoting Ramsey County Sheriff Bob

there were 2,438 individuals included in the Gang Pointer File Database.<sup>8</sup> Of the individuals included in the Gang Pointer File, fifty-four percent are Black (1,324 individuals), thirty-six percent are White (870), nine percent are Indian (209), and five percent are Asian (134).<sup>9</sup>

In order to be placed in the Gang Pointer File, an individual must:

1. Be at least 14 years of age;
2. Have been convicted of a gross misdemeanor or felony; or have been adjudicated or has a stayed adjudication as a juvenile for an offense that would be a gross misdemeanor or felony if committed by an adult; and
3. Have met at least three of the criteria or identifying characteristics of gang membership developed by the Gang and Drug Oversight Council under Minn. Stat. § 299A.641, subdivision 3, clause (7).<sup>10</sup>

## **2. Development of Ten-Point Criteria**

Minn. Stat. § 299A.641 allows for the establishment of the Gang and Drug Oversight Council to “provide guidance related to the investigation and prosecution of gang and drug crime.”<sup>11</sup> The Gang and Drug Oversight Council is made up of thirty-two members.<sup>12</sup> Of the thirty-two members, two members are selected by the oversight Council itself.<sup>13</sup> The Gang and Drug Oversight Council is charged with the task of ameliorating “the harm caused to the public

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Fletcher, who, along with other law enforcement personnel, presented information to the Legislature in 1997 about criteria being used elsewhere).

<sup>8</sup> 2008 Annual Report, Metro Gang Strike Force, p. 8. (*available at* <http://www.leg.state.mn.us/docs/2009/other/090568.pdf>).

<sup>9</sup> 2008 Annual Report, Metro Gang Strike Force, p. 8 (citation omitted). Hispanic/Latino/Latina individuals are included as White in this statistical breakdown from 2008 MGSF Annual Report (Hispanic/Latino/Latina population is 4.1% of MN population).

<sup>10</sup> Minn. Stat. § 299C.091, subd. 2 (2009).

<sup>11</sup> Minn. Stat. § 299A.641, subd. 1 (2009).

<sup>12</sup> *See* Minn. Stat. § 299A.641, subd. 2 (2009). The Gang and Drug Oversight Council consists of these members: the Superintendent of the BCA; the Attorney General; eight Chiefs of Police; the United States Attorney for the District of Minnesota; two County Attorneys, a command-level representative of a gang strike force; a representative from a drug task force; a representative from the United States Drug Enforcement Administration; a representative from ATF; a representative from the FBI; a Tribal Peace Officer, a Senator; a representative who serves on the committee having jurisdiction over Criminal Justice Policy; and two additional members who may be selected by the Gang and Drug Oversight Council. *Id.*

<sup>13</sup> *Id.*

by gang and drug crime within the state of Minnesota.”<sup>14</sup> To do this, the Gang and Drug Oversight Council is authorized by statute to “adopt criteria and identify characteristics for use in determining whether individuals are or may be members of gangs involved in criminal activity.”<sup>15</sup> The Gang and Drug Oversight Council drafted and adopted the use of the following ten-point criteria:<sup>16</sup>

1. Subject admits to being a gang member;
2. Is observed to associate on regular basis with known gang members;
3. Has tattoos indicating gang membership;
4. Wears gang symbols to identify with a specific gang;
5. Is in a photograph with known gang members and/or using gang-related hand signs;
6. Name is on gang document, hit list, or gang-related graffiti;
7. Is identified as a gang member by a reliable source;
8. Arrested in the company of identified gang members or associates;
9. Corresponds with known gang members or writes and/or receives correspondence about gang activity;
10. Writes about gang (graffiti) on walls, books and paper.<sup>17</sup>

### **3. Gang Pointer File Operational/Procedural Standards**

The data in the Gang Pointer File “must be submitted and maintained as provided” by Minn. Stat. § 299C.091.<sup>18</sup> Law enforcement agencies may input data of an alleged gang member into the “criminal gang investigative data system only if the agency obtains and maintains the documentation required under this subdivision.”<sup>19</sup> Therefore, every law enforcement agency that

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<sup>14</sup> Minn. Stat. § 299A.641, subd. 3 (2009).

<sup>15</sup> Minn. Stat. § 299A.641, subd. 3(7) (2009).

<sup>16</sup> See generally Minn. Stat. § 299C.091, subd. 2(b)(1).

<sup>17</sup> See 2008 Annual Report, Metro Gang Strike Force, p.7.

<sup>18</sup> Minn. Stat. § 299C.091, subd. 1 (2009).

<sup>19</sup> Minn. Stat. § 299C.091, subd. 2 (2009).

maintains the Gang Pointer File must follow all of the requirements enumerated under Minn. Stat. § 299C.091.

Under Minn. Stat. § 299C.091, all data entered into the Gang Pointer File is classified as “confidential.”<sup>20</sup> Pursuant to Minn. Stat. § 13.02, “confidential data” means “data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data.” The Gang Pointer File data is not readily available to the public. If a person believes he or she is listed as a confirmed gang member in the Gang Pointer File, that person may make a “request to a responsible authority or designee,” and will be informed whether he or she is the “subject of stored data on individuals, and whether it is classified as public, private or confidential.”<sup>21</sup>

The BCA is required to perform “periodic random audits of data under subdivision 2...for the purpose of determining the validity, completeness, and accuracy of data submitted to the system.”<sup>22</sup> Moreover, the BCA is responsible for purging names from the Gang Pointer File. It is mandatory for the BCA to destroy data “entered into the system when three years have elapsed since the data were entered into the system” and the individual has not “been convicted as an adult, [n]or has been adjudicated or has a stayed adjudication as a juvenile for an offense that would be a crime if committed by an adult, since entry of the data into the system.”<sup>23</sup> In addition, law enforcement agencies who submit the data have the authority to request that the

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<sup>20</sup> Minn. Stat. § 299C.091, subd. 2 (2009).

<sup>21</sup> Minn. Stat. § 13.04, subd. 4 (2009).

<sup>22</sup> Minn. Stat. § 299C.091, subd. 4 (2009). According to an interview of Bob Bushman, Coordinator of Gang and Drug Task Forces, the Minnesota Criminal Gang Pointer File is “purged” of names periodically throughout the year. See Gottfried, *Database on Gangs*, *supra* note 7, at A1 (quoting Bob Bushman, statewide coordinator of gang and drug task forces).

<sup>23</sup> Minn. Stat. § 299C.091, subd. 5 (2009).

BCA “destroy the data regardless of whether three years have elapsed since the data were entered into the system.”<sup>24</sup>

#### **4. Issues Regarding the Administration of the Gang Pointer File**

Both Minn. Stat. § 299C.091 and § 299A.641 govern the use of the Gang Pointer File. These statutes lay out the applicable rules and procedures that must be followed to utilize the Gang Pointer File.<sup>25</sup> There are questions, however regarding accountability and terminology stemming from the interpretation of the statutes.

##### *a) Accountability*

According to Minn. Stat. § 299C.091, the BCA is authorized to “administer” and “maintain” the Gang Pointer File.<sup>26</sup> However, there are discrepancies regarding which agency actually oversees the maintenance of the Gang Pointer File. A spokesperson for the BCA asserted that the BCA maintains and always has maintained the Gang Pointer File.<sup>27</sup> However, the 2008 Annual Report of the now defunct Metro Gang Strike Force stated, as “part of its mission, the Metro Gang Strike Force maintains the Gang Pointer File.”<sup>28</sup> Others also seemed to attribute the maintenance of the Gang Pointer File to the Metro Gang Strike Force. In a 2008 newsletter sent out to Minnesota law enforcement agencies, the U.S. Attorney’s Office of the District of Minnesota stated that the Gang Pointer File was administered by the Metro Gang Strike Force.<sup>29</sup> Therefore, it is unclear whether the BCA has always maintained the Gang Pointer File or if, during its existence, the Metro Gang Strike Force maintained the Gang Pointer File.

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<sup>24</sup> Minn. Stat. § 299C.091, subd. 5 (2009).

<sup>25</sup> See Minn. Stat. § 299C.091, subd. 2 (2009).

<sup>26</sup> See Minn. Stat. § 299C.091 (2009).

<sup>27</sup> Telephone Interview with Dave Johnson, Executive Director, Bureau of Criminal Apprehension (Sept. 25, 2009).

<sup>28</sup> 2008 Annual Report, Metro Gang Strike Force, p. 7.

<sup>29</sup> *The State of Gangs in Minnesota*, THE EAGLE, Fall 2008, Issue 33, at 7, available at <http://www.usdoj.gov/usao/mn/downloads/eagle.fall.08.pdf>.

This raises questions about the accountability for administering, accessing and maintaining the database.

*b) Accessibility to the Databases*

Although the data in the Gang Pointer File is classified as “confidential,” it is unclear which entities in particular can gain access to the data. One of the reasons that a lack of clarity exists is the fact that certain terms within Minn. Stat. § 299C.091 and § 299A.641 are left unclear and ambiguous. Two such terms are “law enforcement agencies” and “criminal justice agencies.” Bob Fletcher, Ramsey County Sheriff, noted that the Gang Pointer File has a higher threshold for access than GangNet because “more people in law enforcement, including prosecutors and probation officers, can access the information.”<sup>30</sup> Minn. Stat. § 299C.091 ensures that only “law enforcement agencies” and “criminal justice agencies” have access to the Gang Pointer File data. Nowhere in either Minn. Stat. § 299A or § 299C is there a definition of what constitutes “law enforcement agencies” or “criminal justice agencies.” Thus, it is unclear which entities actually qualify as “law enforcement agencies” and/or “criminal justice agencies” under the above-referenced statutes. For example, do probation officers or small departments with limited security resources qualify as “law enforcement agencies” or “criminal justice agencies”?

There are varying definitions of “criminal justice agencies” located in other parts of the Minnesota Statutes. Under the Data Practices Act, a “criminal justice agency” is defined as “all state and local prosecution authorities, all state and local law enforcement agencies, the Sentencing Guidelines Commission, the Bureau of Criminal Apprehension, the Department of Corrections, and all probation officers who are not part of the judiciary.”<sup>31</sup>

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<sup>30</sup> See Gottfried, *Database on Gangs*, *supra* note 7, at A1 (referencing Bob Fletcher, Ramsey County Sheriff).

<sup>31</sup> Minn. Stat. § 13.02, subd. 3a (2009).

In contrast, Minn. Stat. § 299C.46 defines a “criminal justice agency” as an “agency of the state or an agency of a political subdivision charged with detection, enforcement, prosecution, adjudication or incarceration in respect to the criminal or traffic laws of this state.”<sup>32</sup> As a result, it is not clear which entities qualify as “criminal justice agencies.” This ambiguity could potentially result in “unauthorized” or “unintended” agencies gaining access to “confidential” data within the Gang Pointer File; thereby compromising the privacy of those listed therein.

*c) Purging and Auditing Pursuant to Minn. Stat. § 299C.091*

The BCA is responsible for purging names from the Gang Pointer File. Pursuant to Minn. Stat. § 299C.091, the BCA must purge a name from the Gang Pointer File if “three years have elapsed since the data were entered into the system” and the individual has not “been convicted as an adult, [n]or has been adjudicated or has a stayed adjudication as a juvenile for an offense that would be a crime if committed by an adult.”<sup>33</sup> Notably, there appears to be no statutory language in place that lays out specific plans for the execution of such purges. Nor does the BCA make public the results of purges of the Gang Pointer File. Consequently, it is unclear to the public when, how often, and by what procedures the BCA uses to purge such names/data from the Gang Pointer File. As such, the BCA could choose to purge data as often or as infrequently as it sees fit.

The BCA is also required to perform periodic random audits of the Gang Pointer File. The purpose of these audits is to determine the “validity, completeness, and accuracy of data

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<sup>32</sup> Minn. Stat. § 299C.46, subd. 2 (2009).

<sup>33</sup> Minn. Stat. § 299C.091, subd. 5 (2009).

submitted to the system.”<sup>34</sup> The audits compare the information contained in the Gang Pointer File with information in individual files.<sup>35</sup> As with purges, there are no easily accessible ways for the public to view the results of the audits. Andy Skoogman, a Department of Public Safety spokesman, noted that the database audit could “turn up people misidentified as gang members,’ but he said that he could not confirm that without checking voluminous files individually.”<sup>36</sup> For example, in the 2007 BCA audit, two hundred and nineteen (219) out of the two thousand and fifty-two (2,052) files were checked; the check returned thirty-two (32) unsuccessful audits, a fifteen percent (15%) failure rate.<sup>37</sup> Therefore, if all the files were checked, utilizing the fifteen percent (15%) failure rate noted above, there is a potential that three hundred (300) individuals may be misidentified as gang members.<sup>38</sup>

## **B. GANGNET**

### **I. Structure**

GangNet was developed in 1998 by the Ramsey County Sheriff’s Office through funding provided by the Minnesota Department of Public Safety.<sup>39</sup> The Ramsey County Board approved receipt of the funding for the creation of GangNet.<sup>40</sup> GangNet was originally established to act primarily as a feeder system – a multi-jurisdictional database of information about potential gang members that have not met the criteria for inclusion in the Gang Pointer File. It later developed

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<sup>34</sup> Minn. Stat. § 299C.091, subd. 4 (2009). According to Bob Bushman, statewide coordinator of the Gang and Drug Task Force, the Gang Pointer File is “purged” of names periodically throughout the year. *See* Gottfried, *Database on Gangs*, *supra* note 7, at A1 (referencing Bob Bushman, statewide coordinator of gang and drug task force).

<sup>35</sup> *See* Gottfried, *Database on Gangs*, *supra* note 7, at A1 (quoting Andy Skoogman, Department of Public Safety spokesman).

<sup>36</sup> *See id.*

<sup>37</sup> *See id.*

<sup>38</sup> This is using the 2007 Gang Pointer File statistics not the current 2009 Gang Pointer File numbers which is approximately 2,438 as of February of 2009.

<sup>39</sup> *See generally* S.F. No. 218 (1997), S.F. No. 1880 (1997) (authorized Criminal Gang Oversight Council to make various grants and appropriate funds).

<sup>40</sup> Ramsey County Board of Commissioners Session Meeting, June 9, 1998.

into a multi-purpose information system; serving as a means of pre-identifying potential gang members who have met at least one of the ten-point criteria.<sup>41</sup>

According to Steve Lydon, Director of the Ramsey County Sheriff's Office which administers GangNet, "GangNet is a repository of people who have started to meet the criteria."<sup>42</sup> In a September 2009 *Pioneer Press* article Lydon stated, "It doesn't mean you are a gang member just because you are in GangNet."<sup>43</sup>

However, law enforcement's use of GangNet could have far-reaching impact for individuals whose data is stored in the database; as GangNet is used by ninety-six agencies statewide.<sup>44</sup> The standards for law enforcement to enter a person into GangNet are less stringent than the criteria needed for law enforcement to enter a person into the Gang Pointer File. GangNet's lower threshold arguably gives rise to a greater number of individuals listed in the GangNet database as compared to the Gang Pointer File. At the end of 2008, GangNet had 16,764 individuals listed in its database; compared to 2,438 individuals listed in the Gang Pointer File.<sup>45</sup> Of the individuals included in GangNet, over forty-two percent are Black (7,108 individuals), thirty-two percent are Hispanic (2,180), over eighteen percent are Asian (3,120) and over eighteen percent are white (3,108).<sup>46</sup>

## 2. GangNet's Operational/Procedural Standards

Law enforcement may enter a person into GangNet if the person meets one of the ten-point criteria developed by the Criminal Gang Oversight Council, compared to the requirement to meet at least three criteria for the Gang Pointer File.<sup>47</sup> Unlike the Gang Pointer File, a person

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<sup>41</sup> See generally Gottfried, *Database on Gangs*, *supra* note 7, at A1.

<sup>42</sup> *Id.*

<sup>43</sup> Gottfried, *Database on Gangs*, *supra* note 7, at A1.

<sup>44</sup> See *id.*

<sup>45</sup> See 2008 Annual Report, Metro Gang Strike Force, p. 26.

<sup>46</sup> *Id.*

<sup>47</sup> See Appendix A, GangNet Operational Standards, Status of GangNet.

is not required to have been convicted of a felony or gross misdemeanor to be entered into GangNet.<sup>48</sup> It also appears that there is no minimum age requirement for inclusion, as there is in the Gang Pointer File.<sup>49</sup>

GangNet's Operational Standards state that its data is considered "confidential"<sup>50</sup> which means that individuals cannot ordinarily access the data contained in the database.<sup>51</sup> A person may file a data practice request with the Ramsey County Sheriff's Office to inquire whether the agency is maintaining any data on that person and how the data is classified.<sup>52</sup> Since the data is considered "confidential," the Ramsey County Sheriff's Office may only inform a person listed in GangNet that the agency is maintaining "confidential" data about him or her. The person is not necessarily entitled to find out what that data is or why it is being maintained by the agency.<sup>53</sup>

If a person entered into GangNet does not receive any new convictions for a misdemeanor or felony or meet any additional criteria in ten years, the person's name is purportedly purged from GangNet.<sup>54</sup> If a person does not have any new convictions or meet any

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<sup>48</sup> *See id.*

<sup>49</sup> *See id.*

<sup>50</sup> *See id.* (noting that "[d]ata maintained by a law enforcement agency to document an entry in GangNet are confidential data on individuals as defined in Minn. Stat. § 13.02, subd. 3, but may be released to criminal justice agencies.").

<sup>51</sup> "Confidential data on individuals means data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data." Minn. Stat. § 13.02, subd. 3 (2009).

<sup>52</sup> Minn. Stat. § 13.04, subd. 3 (2009) ("[U]pon request to a responsible authority or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data.").

<sup>53</sup> *Id.*; *see also* Gottfried, *Database on Gangs*, *supra* note 7, at A1 (quoting Bob Fletcher, Ramsey County Sheriff, stating if an individual files a request with the Ramsey County Sheriff's Office, asking if he or she is in GangNet, the office will notify the individual if he or she is or is not in GangNet).

<sup>54</sup> *See also* Appendix A, GangNet Operational Standards, Review/Purge.

new criteria after five years, the person may ask the Ramsey County Sheriff's Office to remove his or her name from the database.<sup>55</sup>

However, it is unclear how a person would be able to request removal of his or her name from GangNet (after five years without a new conviction or new criteria are met); as a person is not notified of his or her entry into GangNet. Thus, he or she would not know when five years have elapsed since his or her information was entered into the GangNet database.<sup>56</sup>

### **3. Challenges with GangNet as a Database**

#### *a) Regulation of GangNet*

The existence of the GangNet database, as well as its present breadth and scope is cause for concern; especially as it relates to privacy interests of affected individuals. According to the Minnesota Data Practices Act, “[c]ollection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.”<sup>57</sup> While it could be argued that GangNet's existence may have been authorized by the Ramsey County Board through its acceptance of funds from the Minnesota Department of Public Safety,<sup>58</sup> this is difficult to confirm because the Ramsey County Sheriff's Office does not cite to a specific statute, local ordinance or federal mandate authorizing GangNet's creation nor governing its operational

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<sup>55</sup> *Id.*

<sup>56</sup> See Gottfried, *Database on Gangs*, *supra* note 7, at A1 (a person may be able to find out if he or she is in GangNet by inquiring in a letter sent to the Ramsey County Sheriff's Office. However, an individual that does not suspect he or she is in GangNet would not know or think to write a letter inquiring about his or her presence in GangNet, thus, limiting the usefulness of this option).

<sup>57</sup> Minn. Stat. § 13.05, subd. 3 (2009).

<sup>58</sup> S.F. No. 1880 (1997), subd. 10 (c).

procedures,<sup>59</sup> regulations and standards that law enforcement agencies must follow (i.e. data collection, audit and purge standards).<sup>60</sup>

b) *Comparison of Gang Pointer File and GangNet*

It is troubling that although GangNet apparently has the same ultimate goal in collecting information on individuals as the Gang Pointer File (identifying criminal gang activity), it does not seem to abide by the same regulations as the Gang Pointer File.<sup>61</sup> GangNet arguably bypasses a number of restrictions and protections afforded to individuals whose data is stored in the Gang Pointer File.<sup>62</sup> This enables GangNet to collect information on thousands of individuals who are not “confirmed gang members.”<sup>63</sup> For example, to be entered in to the Gang Pointer File, a person has to be at least 14 years old. There is no such provision in the GangNet Operational Standards.<sup>64</sup> The absence of a minimum age requirement may suggest that a person of any age, no matter how young, may be entered into GangNet.

Moreover, Minn. Stat. § 299C.091, subd. 2(b)(1) requires an individual entered into the Gang Pointer File database to meet at least three of the ten-point criteria or identifying

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<sup>59</sup> Appendix A, GangNet Operational Procedures (did not cite to any ordinance or statute authorizing GangNet’s existence or any authority for collecting and maintaining the data as it does); Telephone Interview with Dave Johnson, Executive Director, Bureau of Criminal Apprehension (Sept. 25, 2009) (Johnson stated that GangNet’s rules and operating procedures follow the Minnesota Data Practices Act, and did not know of any other statute or ordinance with which GangNet was obliged to comply. It needs to be noted, however, that Johnson works for the BCA, not the Ramsey County Sheriff’s Office. In written correspondence with the Ramsey County Sheriff’s Office, there were no statutes or ordinances provided that were in conflict with Johnson’s statement).

<sup>60</sup> GangNet must abide by the Minnesota Data Practices Act, Minn. Stat. chapter 13, but many of the restrictions contained in the Data Practices Act are bypassed by GangNet Operational Standards designating the information in GangNet as “criminal investigative data” per Minn. Stat. § 13.82, subd. 7 and therefore “confidential” per Minn. Stat. § 13.02, subd. 3a, subd. 7. These classifications allow law enforcement to forego notifying an individual from whom they are collecting information and restrict an individual’s access to the information entered in GangNet; *see generally* Appendix A, GangNet Operational Standards.

<sup>61</sup> Minn. Stat. § 299C.091 (2009).

<sup>62</sup> *See generally* Gottfried, *Database on Gangs*, *supra* note 7, at A1.

<sup>63</sup> *See* Gottfried, *Database on Gangs*, *supra* note 7, at A1 (quoting GangNet administrator Steve Lydon saying, “Just because you are in GangNet does not mean you are a gang member.”).

<sup>64</sup> Appendix A, GangNet Operational Procedures (does not include any provisions in regard to age requirement needed to be entered in GangNet); *see also* Gottfried, *Database on Gangs*, *supra* note 7, at A1 (stating that a person must be at least 14 years old to be entered in GangNet, however, the article does not note where the information was obtained).

characteristics of gang membership developed by the Gang and Drug Oversight Council.<sup>65</sup> According to GangNet's Operational Standards, individuals need only meet one criterion or identifying characteristic of gang membership to be entered into GangNet.

Further, Minn. Stat. § 299C.091, subd. 2(b)(2) also requires that for an individual to be entered into the Gang Pointer File the individual must have been convicted of a gross misdemeanor or felony.<sup>66</sup> To be entered into GangNet, a person need not be convicted of any crime.<sup>67</sup>

GangNet also stores data on individuals for much longer than the Gang Pointer File. Subdivision 5 of Minn. Stat. § 299C.091 states that the BCA must destroy data entered into the Gang Pointer File once three years have elapsed since a person was entered into the system. If the BCA has information that the subject of the data has been convicted of a crime since placement in the Gang Pointer File, the data will be destroyed after three years have elapsed since the last conviction of a crime.<sup>68</sup> GangNet, on the other hand, does not remove individuals from its database until ten years have elapsed since the original date of entry. If during that time, however, a person meets another one of the ten-point criteria; is incarcerated; or is convicted of a crime; the person will remain in GangNet for another ten years. A person's information is only

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<sup>65</sup> The Gang and Drug Oversight Council was granted the power to "adopt criteria identifying characteristics for use in determining whether individuals are or may be members of gangs involved in criminal activity." Minn. Stat. § 299A.641, subd. 3(7) (2009).

<sup>66</sup> Under the statute a person must be convicted of a gross misdemeanor or felony "or has a stayed adjudication as a juvenile for an offense that would be a gross misdemeanor or felony if committed by an adult." Minn. Stat. § 299C.091, subd. 2(b)(2) (2009).

<sup>67</sup> See Appendix A, GangNet Operational Standards, Gang Member Submission Criteria.

<sup>68</sup> Minn. Stat. § 299C.091, subd. 5 (2009). For example, if a person is entered into the Gang Pointer File in 2009, the person will be purged from the system three years later in 2012. However, if the person is entered into the system in 2009, and then is convicted of a crime in 2010, the person may remain in the database until at least 2013.

purged from GangNet when he or she has been “gang free” (meaning has not met another one of the ten-point criteria) and has not been incarcerated or convicted of a crime for ten years.<sup>69</sup>

Another concern with GangNet is the classification of data as “confidential.”<sup>70</sup> GangNet Operational Standards justify the “confidential” classification by declaring the information in the database as “investigative data” which offers much less protection to individuals than a private classification, or even confidential information (without being deemed investigative data).<sup>71</sup> Furthermore, it is worrisome that GangNet appears to be self-regulated. That is, the entity that administers GangNet (Ramsey County Sheriff’s Office) also enters data into GangNet. It is unclear whether the other subscribing ninety-six agencies that utilize GangNet are authorized to input data into the system. With limited oversight of GangNet and its practices; except by the law enforcement agencies that maintain it, there is limited accountability if erroneous information has been entered into the database.

### **III. GENERAL CONCERNS WITH MINNESOTA’S GANG DATABASES**

The simultaneous use of two databases that contain nearly 20,000 names in the aggregate raises a plethora of questions concerning privacy, accuracy, equity, fairness, and accountability. Some of the questions that must be asked and critically examined include the following: Is there a sound justification for having two different databases with disparate qualifying requirements?<sup>72</sup> Does being listed in the databases have adverse legal or social collateral consequences;

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<sup>69</sup> See Appendix A, GangNet Operational Standards, Review/Purge. According to the GangNet Operational Standards, a person may request to be removed from GangNet after five years if that person has been “gang free,” has not been incarcerated and has not been convicted of a crime. However, given that persons are not notified of their status within GangNet, it is questionable whether they will actually benefit from this process and be able to request removal in a timely fashion.

<sup>70</sup> See Appendix A, GangNet Operational Standards, Dissemination.

<sup>71</sup> Minn. Stat. § 13.02, subd. 3; Minn. Stat. § 13.82, subd. 7 (2009) (allowing criminal justice agencies to waive an individual’s right to a Tennessee Warning when collecting private or confidential information about a person when the data is being collected for criminal investigative purposes).

<sup>72</sup> See Minn. Stat. § 299C.091, subd. 5 (2009); see also Appendix A, GangNet Operational Standards.

especially for those who have been misidentified or are not active gang members? Should there be a notice requirement for adults and/or for juveniles? Should there be procedural safeguards in place to monitor how law enforcement enters and maintains names in the databases? For instance, should officers be required to “get approval from a judge or magistrate before entering a name in a database?”<sup>73</sup> Additionally, should officers be required to meet a heightened burden of proof and provide corroborating evidence before being allowed to input data into the system? Moreover, there are questions regarding the use of the ten-point criteria. For example, are the criteria too subjective and/or repetitive? More importantly, do the criteria disproportionately impact youth of color?

As a result of these questions, the remainder of this section will analyze the various concerns regarding the use of the Gang Pointer File and GangNet by law enforcement agencies.

#### **A. KEY CONCERNS WITH THE USE OF THE TEN-POINT CRITERIA**

For reference purposes, the ten-point criteria are listed below:

##### TEN-POINT CRITERIA

1. Subject admits to being a gang member;
2. Is observed to associate on regular basis with known gang members;
3. Has tattoos indicating gang membership;
4. Wears gang symbols to identify with a specific gang;
5. Is in a photograph with known gang members and/or using gang-related hand signs;
6. Name is on gang document, hit list, or gang-related graffiti;
7. Is identified as a gang member by a reliable source;
8. Arrested in the company of identified gang members or associates;

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<sup>73</sup> Linda S. Beres & Thomas D. Griffith, *Demonizing Youth*, 34 LOY. L.A. L. REV. 747, 760 (2001).

9. Corresponds with known gang members or writes and/or receives correspondence about gang activity;
10. Writes about gang (graffiti) on walls, books and paper.

There are a number of concerns regarding the use and enforcement of the ten-point criteria. Concerns include, but are not limited to: (1) the criteria tend to enforce a “guilty by association” mentality because some criterion arguably have the potential to confuse “social ties” with “criminal purpose;”<sup>74</sup> (2) some of the criterion do not specifically address the issue of gang involvement; and (3) the criteria may allow for too much discretion to be used in regards to who is allowed to identify gang members.

First, the criteria may ensnare individuals who are not involved in gang activity. The Gang Pointer File and GangNet data are kept “confidential.” Therefore, criterion 2 (is observed to associate on regular basis with known gang members) and criterion 5 (is in a photograph with known gang members) do not provide fair warning to individuals who may associate with “alleged gang members” since gang data is “confidential.”<sup>75</sup> Individuals have no way of knowing which members of the community are considered “known” gang members by law enforcement officers.<sup>76</sup> Moreover, a person may associate with another person who was once in a gang, but has not been “effectively” purged from the Gang Pointer File or GangNet databases.<sup>77</sup> For example, if an individual lives in a targeted area where there is a high concentration of “gang members” it is almost certain that that individual meets criterion 2 or 5 and/or other enumerated

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<sup>74</sup> Jeffrey J. Mayer, *Individual Moral Responsibility and the Criminalization of Youth Gangs*, 28 WAKE FOREST L. REV. 943, 966 (1993).

<sup>75</sup> See 34 ST. MARY’S L.J. 581, 619.

<sup>76</sup> See 34 LOY. L.A. L. REV. 747, 761.

<sup>77</sup> See 34 ST. MARY’S L.J. 581, 611; see also Joshua D. Wright, *Dangerous Data: The Use and Abuse of Gang Databases Introduction...Part III.*, The Constitutional Failure of Gang Databases, 2 STAN. J. CIV. RTS. & CIV. LIBERTIES 115, 127.

criteria.<sup>78</sup> This may not mean that the person is involved in gang activity, but may simply be in contact with peers or even relatives living in the same neighborhood. Close association with a “known” gang member should only be relevant if one can “infer a criminal purpose from the association, but social realities demonstrate that this inference is often unwarranted.”<sup>79</sup> Therefore, the criteria may put individuals at risk of documentation even though they may not be aware that they are communicating with a “known” gang member; and may not have a criminal purpose behind the association.

Second, some of the criteria do not necessarily evidence active and current gang involvement. While criterion 3 (has tattoos indicating gang membership) may target some gang members, it may also entrap former gang members, such as adults who were involved in gangs during their youth but have since reformed their lives.<sup>80</sup> Additionally, tattoos are popular forms of artistic expression, especially within communities of color and may not be sufficient evidence to establish gang membership.<sup>81</sup> Furthermore, the criteria may provide for too much discretion with regard to who is allowed to identify “alleged gang members.” Criterion 7 notes that a gang member may be identified by a “reliable source.” This criterion does not reveal who is considered a “reliable source.” Could a teacher, parent, probation officer, social worker, fellow gang member, or “trusted informant” be a reliable source? If so, is the list of reliable sources too broad and/or too subjective?

Third, there are concerns with how information obtained by a “reliable source” is verified or corroborated.<sup>82</sup> For instance, one concern with the Metro Gang Strike Force’s administration

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<sup>78</sup> See 34 ST. MARY’S L.J. 581, 619.

<sup>79</sup> See 28 WAKE FOREST L. REV. 943, 966.

<sup>80</sup> See 34 ST. MARY’S L.J. 581, 620. Short of enduring the physical pain and financial burden associated with tattoo removal, what mechanisms may individuals use to show that their tattoos represent an “old way” of life and no longer evidence gang involvement.

<sup>81</sup> See 34 ST. MARY’S L.J. 581, 620.

<sup>82</sup> See 34 LOY. L.A. L. REV. 747, 761.

of the gang databases was that in many cases when confidential informants were used, there were no references to the confidential informants by symbol or code.<sup>83</sup> Aside from the officer who handled the confidential informant, it was not apparent to others which confidential informant provided the information.<sup>84</sup> These concerns demonstrate issues related to accountability and police discretion. Clarification and proper documentation practices are needed to alleviate some of the general concerns with the Gang Pointer File and GangNet databases.

## **B. COMMUNITY CONCERNS**

Community members within the Metro area support public safety efforts and reductions in criminal gang activity. However, community members have voiced trepidation regarding the current use and scope of the Gang Pointer File and GangNet databases. One individual noted, “[t]he concern I have as a community member is you only need three out of ten[...]to get on something that’s going to change your life so drastically.”<sup>85</sup> When seeking to strike a balance between achieving public safety and being responsive to community concerns, it is important to ask such questions as: How does the Gang Pointer File and GangNet affect communities within the Twin Cities? How do the documentation practices affect communities of color? Do the ten-point criteria evidence criminal gang activity or do they highlight factors that are synonymous with the urban youth culture? These questions represent legitimate concerns that are pervasive within impacted communities. The opinions voiced by community members are geared towards creating greater levels of accountability and more narrowly-crafted criteria that address the public safety concerns of gang-related, criminal activity while protecting citizens against unwarranted governmental intrusion.

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<sup>83</sup> See Andrew Luger & John Egelhof, Report of the Metro Gang Strike Force Review Panel 29, (Aug. 20, 2009).

<sup>84</sup> *Id.*

<sup>85</sup> Mara H. Gottfried, *Community Forum on St. Paul Gangs Focuses on Police Database Unit Head Explains Criteria For Inclusion*, ST. PAUL PIONEER PRESS, July 29, 2009, at B3 Local (referencing concern by Jeff Martin, Chair of the St. Paul NAACP’s Legal Redress Committee).

Community members have raised specific concerns regarding conduct by members of gang strike forces and law enforcement when attempting to identify potential gang members for inclusion into gang databases. For example, community members expressed frustration with practices involving photographing youth and young adults in the community. Several community members provided examples of officers rounding up African-American youth and young men and encouraging them to pose for photographs without informing them of the purposes behind the photos; leaving community members feeling that this tactic is being misused by law enforcement.<sup>86</sup>

With regard to questioning community members about possible gang membership, concerns have been raised by members of the Latino community and the African-American community. Some members of the Latino community are concerned that officers are inquiring of Spanish-speaking individuals about gang membership in English and without the assistance of an interpreter; leading to the potential of inaccurate, and erroneous information being entered into gang databases. Members of the African-American community have expressed concerns that officers are pressuring “unaffiliated” youth and young adults to admit membership in a gang for documentation purposes.<sup>87</sup>

Additionally, some community members are concerned that the purging requirements are sometimes loosely followed. Ice Demmings, an admittedly ex-gang member, claims that the purging requirements are not being followed adequately. Demmings attempted to join the National Guard but was not eligible because he is still currently listed as an active gang member. Demmings noted that he has that not been in a gang for thirteen years but his presence on the

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<sup>86</sup> Gangs of St. Paul III Town Hall Meeting, Nov. 12, 2009.

<sup>87</sup> Gangs of St. Paul Workgroup Meeting, Aug. 27, 2009.

gang list is hindering his ability to successfully rejoin the community.<sup>88</sup> Frustrated, Demmings commented that, “[w]hen people are trying to reform and make positive changes, this list prevents them from doing it.”<sup>89</sup> The best way to secure public safety is to ensure accountability and a sense of fairness within the gang database systems and the requirements for inclusion into those systems.

There are various concerns with the need for and use of GangNet. It is easier for individuals to be listed in GangNet because they only have to meet one of the ten-point criteria and they need not have to have committed a felony or gross misdemeanor.<sup>90</sup> This distinction has affected numerous people, including James Shelton Jr. Shelton 22. Shelton attends Metropolitan State University and aspires to be a probation officer. Shelton cannot enter this profession, however, because he was told that he was in a criminal gang investigative data system.<sup>91</sup> Since Shelton has not committed a felony or gross misdemeanor, and it was Ramsey County that informed him that he was in a database, he believes that he is listed in the GangNet database.<sup>92</sup> Shelton passionately protests that he is not a gang member and that “[i]t feels like [his] future is being molded by other people.”<sup>93</sup>

The ten-point criteria are possibly too subjective, too repetitive, and too broad. As one community member notes, “[p]eople might meet the Pointer File criteria because they have family members who are gang members or they were in a photo with people they grew up with

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<sup>88</sup> Gangs of St. Paul II Town Hall Meeting held on Aug. 27, 2009. Meeting minutes on file with University of St. Thomas Community Justice Project.

<sup>89</sup> *Id.*

<sup>90</sup> See Appendix A, GangNet Operational Standards.

<sup>91</sup> See Gottfried, *Database on Gangs*, *supra* note 7, at A1.

<sup>92</sup> See *id.*

<sup>93</sup> See *id.* (quoting James Shelton Jr.).

who are gang members.”<sup>94</sup> Thus, it may be extremely difficult for law enforcement officers to ensure public safety without trust from the communities they seek to serve.

### **C. THE TEN-POINT CRITERIA DISPROPORTIONATELY AFFECTS COMMUNITIES OF COLOR**

The use of the ten-point criteria by the Gang Pointer File and GangNet databases to identify gang members disproportionately affects communities of color. African-American residents of Minnesota are particularly impacted. For example, although African-Americans represent about five percent of the population in the State of Minnesota, they represent fifty-four percent of those listed in the Gang Pointer File (1,324)<sup>95</sup> and forty-two percent of those listed in GangNet, which is an alarming 7,108. Additionally, thirteen percent of those listed in GangNet are Hispanic/Latino (2,180); over eighteen percent are Asian (3,120), while comparatively over eighteen percent are White (3,108).<sup>96</sup>

The disproportionate number of persons of color listed in the Gang Pointer File and GangNet can have the effect of unjustly sweeping entire neighborhoods into gang databases.<sup>97</sup>

### **D. ENHANCED SENTENCING**

When individuals’ data are stored in gang databases, potentially life-altering consequences could follow. For example, in criminal cases, data stored in the Gang Pointer File or GangNet could be provided by law enforcement to a prosecutor for consideration.<sup>98</sup> The prosecutor will then determine if the information reaches the threshold of proving facts “beyond

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<sup>94</sup> Gottfried, *Community Forum on St. Paul Gangs*, *supra* note 94, at B3 Local (referencing comments made by Nekima Levy-Pounds, associate professor at the University of St. Thomas).

<sup>95</sup> 2008 Annual Report, Metro Gang Strike Force, p. 8 (thirty-six percent are White (870), nine percent are Indian (209), and five percent are Asian (134)).

<sup>96</sup> See 2008 Annual Report, Metro Gang Strike Force, p. 26. (*available at* <http://www.leg.state.mn.us/docs/2009/other/090568.pdf>).

<sup>97</sup> See Brian W. Ludeke, *Malibu Locals Only: “Boys will be Boys,” or Dangerous Street Gang? Why the Criminal Justice System’s Failure to Properly Identify Suburban Gangs hurts Efforts to Fight Gangs*, 43 CAL.W. L.REV. 309, 362 (2007).

<sup>98</sup> See Gottfried, *Database on Gangs*, *supra* note 7, at A1.

a reasonable doubt.”<sup>99</sup> If the prosecutor believes that an individual is connected to a gang, that evidence could be used against the person in criminal proceedings; and if proven, will result in additional penalties such as a longer sentence, an upgrade in offense category, and/or a hefty fine. This occurs because Minnesota courts have adopted the enhanced sentencing standard, meaning that courts may grant an upward departure<sup>100</sup> for those who are linked to being a member of a gang.<sup>101</sup> If a person is convicted of committing a felony “crime to benefit a gang,”<sup>102</sup> the person may be sentenced to serve a prison term that is five years longer than the maximum penalty under the statute.<sup>103</sup> Hypothetically speaking, if a person commits a robbery, the statutory maximum could be a four year sentence. When the person is found to have committed a robbery for the “benefit of a gang,” the person could be sentenced to a nine year prison term. For individuals whose data is listed inaccurately in GangNet or the Gang Pointer File and who are mislabeled as gang members, the consequences could be severe and liberty

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<sup>99</sup> *Id.*

<sup>100</sup> *See* Minn. Stat. § 609.229 (2009) subd. 3. Penalty. “(a) If the crime committed in violation of subdivision 2 is a felony, the statutory maximum for the crime is five years longer than the statutory maximum for the underlying crime. If the crime committed in violation of subdivision 2 is a felony, and the victim of the crime is a child under the age of 18 years, the statutory maximum for the crime is ten years longer than the statutory maximum for the underlying crime. (b) If the crime committed in violation of subdivision 2 is a misdemeanor, the person is guilty of a gross misdemeanor. (c) If the crime committed in violation of subdivision 2 is a gross misdemeanor, the person is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$15,000, or both. Subd. 4. Mandatory minimum sentence. (a) Unless a longer mandatory minimum sentence is otherwise required by law, or the court imposes a longer aggravated durational departure, or a longer prison sentence is presumed under the Sentencing Guidelines and imposed by the court, a person convicted of a crime described in subdivision 3, paragraph (a), shall be committed to the custody of the commissioner of corrections for not less than one year plus one day. (b) Any person convicted and sentenced as required by paragraph (a) is not eligible for probation, parole, discharge, work release, or supervised release until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 242.19, 243.05, 244.04, 609.12, and 609.135.”

<sup>101</sup> *See generally* Minn. Stat. § 609.229 (2009). Under the statute, a ““criminal gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, that: (1) has, as one of its primary activities, the commission of one or more of the offenses listed in section 609.11, subdivision 9;(2) has a common name or common identifying sign or symbol; and (3) includes members who individually or collectively engage in or have engaged in a pattern of criminal activity.”

<sup>102</sup> *See generally* Minn. Stat. § 609.229 (2009). subd. 2. Crimes. “A person who commits a crime for the benefit of, at the direction of, in association with, or motivated by involvement with a criminal gang, with the intent to promote, further, or assist in criminal conduct by gang members is guilty of a crime and may be sentenced as provided in subdivision 3.”

<sup>103</sup> *Id.*

interests may be at stake;<sup>104</sup> as the information could be used as one of many factors to infer gang membership. Thus, it is important to ensure that there is a high degree of accuracy, sufficient oversight, and accountability with regard to entry, maintenance, and storage of the data in gang databases.

#### **E. COLLATERAL CONSEQUENCES RESULTING FROM GANG DOCUMENTATION**

As demonstrated above, there are serious legal and social consequences potentially resulting from placement in the various gang databases. The implications of gang membership affect the opportunities and freedoms of a person convicted of a misdemeanor or felony.<sup>105</sup> Possible legal and social effects include “increased probability of conviction, longer sentences, loss of employment, and other stigmatizing effects.”<sup>106</sup>

Additional consequences of being unjustly placed in a gang database may include disproportionate contact with law enforcement and potential use of excessive force.<sup>107</sup> For example, the Minnesota Gang and Drug Oversight Council noted that, in 2008, there were “23,561 ‘hits’ indicating a confirmed gang member had contact with a law enforcement officer somewhere in the State of Minnesota.”<sup>108</sup> This means that approximately sixty-five alleged gang members were in contact with police officers per day. Every “confirmed gang member” in the Gang Pointer File could have had more than nine contacts with law enforcement in 2008 alone.

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<sup>104</sup> Additionally, concerns have been raised by members of the community regarding situations where a person listed in the database commits a crime that is completely un-related to gang membership; and whether that person will face an enhanced sentence by virtue of their alleged connection to a gang. Gangs of St. Paul II Town Hall Meeting held on Aug. 27, 2009. Meeting minutes on file with the University of St. Thomas Community Justice Project.

<sup>105</sup> See 2 STAN. J. CIV. RTS. & CIV. LIBERTIES 115, 118.

<sup>106</sup> *Id.* at 115.

<sup>107</sup> Research conducted by the National Institute for Justice in 1996 suggests that “documented gang members are more likely to be subjected to excessive force by law enforcement than non-documented individuals.” 8 WM. MITCHELL L. REV. 573, 635.

<sup>108</sup> Minnesota Gang and Drug Oversight Council 2009 Annual Report to the Legislature, p. 7.

Tellingly, only one of every thirty-eight “confirmed gang members” that police stopped was actually arrested.<sup>109</sup>

## F. NOTIFICATION

The three principal rights of individuals who are the subjects of government data are notice, access and data contest.<sup>110</sup> Both the Gang Pointer File and GangNet arguably deprive individuals of all three of these principal rights.

“Criminal justice agencies” are not required by Minn. Stat. § 299C.091 or any of the operational standards for the databases to give an individual notice when he or she has been entered into the Gang Pointer File or GangNet. The Minnesota Data Practices Act, however, requires an agency to give notice to a person from whom it collects private or confidential data (exceptions do apply).<sup>111</sup> This notice is known as the Tennessen Warning. There are four parts to this warning. The person from whom information is sought must be given notice as to:

1. The purpose and intended use of the requested data within the collecting government entity;
2. Whether the individual may refuse or is legally required to supply the data requested;
3. Any known consequences arising from supplying or refusing to supply private or confidential; and
4. The identity of other persons or entities authorized by state or federal law to receive the data.<sup>112</sup>

Early on, the legislature recognized the likelihood that agencies would ignore the Tennessen Warning requirement.<sup>113</sup> To combat this and to show how seriously the legislature viewed a person’s right to notice, there are severe penalties for an agency’s failure to comply.

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<sup>109</sup> *Id.*

<sup>110</sup> Donald Gemberling & Gary Weissman, *Data Privacy: Everything you wanted to know about the Minnesota Government Data Practices Act – From “A” to “Z”*, 8 WM. MITCHELL L. REV. 573, 635.

<sup>111</sup> Minn. Stat. § 13.04, subd. 2 (2009).

<sup>112</sup> *Id.*

<sup>113</sup> 8 WM. MITCHELL L. REV. 573, 587.

An agency that does not give a Tennesen Warning when obtaining private or confidential data from a person is vulnerable to liability for civil damages.<sup>114</sup> In the case of a willful violation, the agency is liable for exemplary damages of at least \$1,000 and up to \$15,000 per violation.<sup>115</sup> As of 2008, there were 2,438 individuals in the Gang Pointer File and 16,764 in GangNet.<sup>116</sup> Failing to notify individuals when information is requested from them for input into a gang database, could leave agencies vulnerable to costly consequences.<sup>117</sup>

One exception to the requirement of the Tennesen Warning is found in Minn. Stat. § 13.82, subd. 7. This statute allows criminal investigative data to be collected or created by a law enforcement agency to prepare a case against a person, while the investigation is still active, to be classified as confidential.<sup>118</sup> In other words, investigative data is information collected when a person has committed a crime.<sup>119</sup> Unless information is collected as part of an active investigation of a crime, it does not appear that it should be considered investigative. Criminal investigative data does not include arrest data,<sup>120</sup> request for service data<sup>121</sup> or response or incident data.<sup>122</sup> Furthermore, it states that nothing in the statute requires law enforcement agencies to create, collect, or maintain data not required by another rule or statute.

Donald Gemberling, the former Director of the Data Privacy Division of the Minnesota Department of Administration for thirty years, and a drafter of the current Minnesota Data Practices Act, suggests that if law enforcement places someone in an intelligence file for future

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<sup>114</sup> Minn. Stat. § 13.08, subd. 1 (2009).

<sup>115</sup> *Id.*

<sup>116</sup> 2008 Annual Report, Metro Gang Strike Force, p. 20.

<sup>117</sup> 8 WM. MITCHELL L. REV. 573, 587.

<sup>118</sup> Minn. Stat. § 13.82, subd. 7 (2009).

<sup>119</sup> *Id.*

<sup>120</sup> Minn. Stat. § 13.82, subd. 2 (2009).

<sup>121</sup> Minn. Stat. § 13.82, subd. 3 (2009).

<sup>122</sup> Minn. Stat. § 13.82, subd. 6 (2009).

reference that information is not to be considered a direct investigative tool.<sup>123</sup> Because the information entered in GangNet does not seem to be used as a direct investigative tool (which would be information collected to help solve a crime) but rather as intelligence, law enforcement needs to give notice to the individual whose data is being stored in the intelligence system.<sup>124</sup>

In GangNet's Operational Standards, it states that the information in its database is "confidential" because it is "criminal investigative data" in accordance with Minn. Stat. § 13.82, subd. 7. Declaring the data in GangNet as "criminal investigative data" allows law enforcement agencies to waive an individual's right to notice where he or she might otherwise have one. According to the statute, law enforcement need not give a person a Tennesen Warning when it is collecting "criminal investigative data" on the person, even though that information is "confidential" and would usually require an officer to give a person a Tennesen Warning.<sup>125</sup>

Given that only law enforcement can access GangNet data,<sup>126</sup> and GangNet Operational Procedures deem the information "confidential" per Minn. Stat. § 13.82, subd. 7, it would not be unreasonable to assume that all individuals in GangNet are part of an "active investigation." If this is the case, then there are currently approximately 17,000 people under "active investigation" in Minnesota due to their inclusion in GangNet.<sup>127</sup> A majority of these individuals

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<sup>123</sup> Telephone Interview, Donald Gemberling, former Director of the Data Privacy Division, Minnesota Department of Administration, Nov. 3, 2009.

<sup>124</sup> *Id.*

<sup>125</sup> Minn. Stat. § 13.04, subd. 2 (requiring law enforcement provide a Tennesen warning to a person from whom it is collecting confidential or private data, except when the data is being collected as criminal investigative data); Minn. Stat. § 13.82, subd. 7 (2009) (describing criminal investigative data, the difference between active investigation and inactive investigation).

<sup>126</sup> *See* Appendix A, GangNet Operational Standards.

<sup>127</sup> 2008 Annual Report, Metro Gang Strike Force, p. 26.

are from the metro area.<sup>128</sup> It is important to note that the exception under Minn. Stat. § 13.82, subd. 7 applies only to “active investigations,” not inactive investigations.<sup>129</sup>

Once an investigation becomes inactive, the data collected for the investigation is, with some restraints, usually deemed public data.<sup>130</sup> This is cause for concern. For example, if a law enforcement agency is collecting information from a person about crime and enters the data in GangNet, that information would become part of an inactive investigation (and therefore public information) upon the expiration of the crime’s statute of limitations.<sup>131</sup> When the statute of limitations has passed for a certain offense, the investigation becomes inactive.<sup>132</sup> Once the investigation becomes inactive, the data collected for that investigation is no longer investigative data. Thus, when an investigation becomes inactive, the data collected as a part of the investigation is presumed to be public. If the crime for which law enforcement is collecting investigative data from an individual has a statute of limitations of three years,<sup>133</sup> that information should not remain in GangNet longer than three years after the commission of the crime, assuming that there were no indictments or complaints found or made and filed in the proper court.<sup>134</sup>

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<sup>128</sup> *Id.*

<sup>129</sup> Minn. Stat. § 13.82, subd. 7 (2009). (“[a]n investigation becomes inactive upon the occurrence of any of the following events: (a) a decision by the agency or appropriate prosecutorial authority not to pursue the case; (b) expiration of the time to bring a charge or file a complaint under the applicable statute of limitations, or 30 years after the commission of the offense, whichever comes earliest; or (c) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data”).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* (noting two additional situations which would also trigger an investigation inactive).

<sup>132</sup> *Id.*

<sup>133</sup> Minn. Stat. § 628.26(k) (2009).

<sup>134</sup> *Id.*

Other instances when a Tennessean Warning is not required include: When an individual volunteers the data; law enforcement did not ask for the data; the data are not about the individual being asked; or the data about the individual are public.<sup>135</sup>

Several of the ten-point criteria used by the Gang Pointer File and GangNet are data that can be observed by law enforcement, without requesting information from the individual. If a Tennessean Warning is not required when individuals are not directly asked to provide information about them, this might give law enforcement an incentive to rely on observations of individuals rather than information provided by the individual. Relying on observations might produce information that is entered into a gang database which may be less reliable than acquiring information from an individual. Collecting data based solely on observations may also create a danger of racial profiling and reliance on biases and stereotypes.

Failure to notify an individual that private or “confidential” data is being collected from him or her may deprive an individual of his or her data contest rights.<sup>136</sup> If an individual is not informed that data about him or her is being collected and stored in a gang database, a person will not be able to contest that data. This heightens the risk of including individuals who have been misidentified as gang members and subjecting them to the consequences of being in the Gang Pointer File or GangNet. Since data in the Gang Pointer File and GangNet are “confidential,” an individual may not gain access to the information kept in either gang database. This bars an individual from checking the accuracy of the information and prohibiting him or her from contesting it.<sup>137</sup>

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<sup>135</sup> Minn. Stat. § 13.04, subd. 2 (2009).

<sup>136</sup> 8 WM. MITCHELL L. REV. 573, 635.

<sup>137</sup> An individual may request to be informed by the government agency if he or she is the subject of public, private or confidential data maintained by the agency. Although an individual may not gain access to confidential data, the Data Practices Act requires an individual be informed that confidential data is being maintained about him or her, upon the request of the individual. Minn. Stat. § 13.04, subd. 3. (2009).

## G. AUDIT & PURGE

Minn. Stat. § 299C.091, which regulates the Gang Pointer File, sets out vague audit requirements. Subdivision 4 of the statute requires the BCA to “conduct periodic random audits of data” with the purpose of “determining the validity, completeness and accuracy of data submitted to the system.”<sup>138</sup> Without a more specific requirement, the protection of individuals erroneously entered into the Gang Pointer File is fragile.<sup>139</sup> “Periodic random audits of data” allows a broad interpretation that the BCA can construe according to its own discretion.

Similar to the Gang Pointer File, GangNet’s Operational Standards do not provide specific instructions on how and when there must be an audit of the database. Instead, the Operational Standards state simply that, “[i]nformation retained in GangNet will be reviewed and validated for compliance with submission criteria.”<sup>140</sup> This offers little guidance, if any, for the review of records in GangNet, which makes the likelihood of mistakes or inaccuracies much higher. This is especially disquieting since GangNet audits and purges are not easily accessible to the public. Thus, this raises questions as to who is accountable for any potential inaccuracies or problems and how the public may be assured that audits and purges are actually taking place.

Of specific concern is the Metro Gang Strike Force’s probable use and maintenance of the Gang Pointer File and GangNet. It appears that during the Metro Gang Strike Force’s existence, it may have administered both databases, and may have been responsible for many of the entries made into the two systems.<sup>141</sup> Despite the Metro Gang Strike Force’s potentially large

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<sup>138</sup> Minn. Stat. § 299C.091, subd. 4. (2009).

<sup>139</sup> See Rebecca Rader Brown, *The Gang’s All Here: Evaluating the Need for a National Gang Database*, 42 COLUM. J.L. & SOC. PROBS. 293, 320 (2009). (stating that a national current trend of database audits “show that, even when minimal maintenance procedures are in place, they are rarely followed.”).

<sup>140</sup> See Appendix A, GangNet Operational Standards, Review/Purge.

<sup>141</sup> Minnesota Gang and Drug Oversight Council 2009 Annual Report to the Legislature, p. 7. Earlier Metro Gang Strike Force annual reports also emphasized the MGSF’s role in being the primary administrator of Minnesota gang databases. Also, a newsletter sent to Minnesota law enforcement agencies by the U.S. Attorney’s Office of the District of Minnesota clearly stated that the GPF was administered by the MGSF. See *The State of Gangs in*

contribution to the Gang Pointer File, there are currently no plans to audit or review the databases for accuracy.<sup>142</sup> The Metro Gang Strike Force’s recordkeeping has been shown to be less than accurate.<sup>143</sup> Therefore, an audit of the data they collected for the gang databases deserves as much attention and correction as other Metro Gang Strike Force endeavors to ensure that the databases were maintained in a fair, accurate and ethical manner.

#### **IV. RECOMMENDATIONS**

Community stakeholders have voiced concerns with the maintenance, use, and procedural polices of the Gang Pointer File and GangNet databases. As Senator Moua stated, “[w]e think there is a public safety value to being smarter about how we collect and maintain information and share information.”<sup>144</sup> Therefore, in response to community concerns and in conjunction with community stakeholders, we suggest the incorporation of the following recommendations:

##### **A. ENSURE NARROWLY TAILORED CRITERIA AND ALLOW FOR COMMUNITY INPUT**

It is important that the criteria utilized by law enforcement agencies “accurately identify gang members.”<sup>145</sup> At least in case of the Gang Pointer File, the purpose of the gang database is to prevent criminal gang activity.<sup>146</sup> Therefore, the goal is to establish clear criteria for local departments that include accountability measures, clear standards, stronger oversight, and a burden of proof that officers must meet. Listed below are recommendations to accomplish this goal:

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*Minnesota*, THE EAGLE, Fall 2008, Issue 33, at 7, available at <http://www.usdoj.gov/usao/mn/downloads/eagle.fall.08.pdf>.

<sup>142</sup> Telephone Interview with Dave Johnson, Executive Director, Bureau of Criminal Apprehension (Sept. 25, 2009). Johnson added that while a regularly scheduled audit of the GPF was to take place, no special audit, reviewing the entries made by the Metro Gang Strike Force would take place. *Id.*

<sup>143</sup> See generally Andrew Luger & John Egelhof, Report of the Metro Gang Strike Force Review Panel, (Aug. 20, 2009).

<sup>144</sup> See Gottfried, *Database on Gangs*, *supra* note 7, at A1 (quoting Senator Mee Moua, Senate Judiciary Committee Chair).

<sup>145</sup> 34 ST. MARY’S L.J. 581, 610-11.

<sup>146</sup> Minn. Stat. § 299C.091, subd. 1 (2009).

## **1. CHANGE AND/OR REDEFINE THE TEN-POINT CRITERIA**

To ensure narrowly tailored criteria, the Gang and Drug Oversight Council should review the ten-point criteria and remove or tailor those criteria that do not narrowly address the Gang Pointer File's purpose to accurately identify gang members involved in criminal activity.<sup>147</sup> To ensure input from impacted communities, the Gang and Drug Oversight Council should form a committee to review the current ten-point criteria.<sup>148</sup> The representatives of the committee should be selected from organizations that have a positive rapport and credibility within communities of color. These representatives should have reasonable knowledge of how gang databases adversely affect people of color. As a result, the representatives should have an opportunity to provide substantial input and to be a part of the decision-making processes to change and/or re-define the ten-point criteria. Once the committee has changed and/or re-defined the criteria, the committee should bring its proposed criteria to the Gang and Drug Oversight Council for review and/or adoption.

## **2. INCLUDE COMMUNITY VOICE/ENGAGEMENT**

To build trust between the community and law enforcement, the community needs to be involved in the internal framework and administration of the Gang Pointer File.

As a result, we recommend that the Gang Oversight and Drug Council:

1. Establish a review board that includes either a meaningful opportunity for community input or has community oversight; and
2. Add a critical mass of community representatives from impacted communities to the Gang Oversight and Drug Council. According to the statute governing the Gang Oversight and Drug Council, the Council has the power to elect two representatives of its

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<sup>147</sup> See authorization pursuant to Minn. Stat. § 299A.641, subd. 3 (7) (2009).

<sup>148</sup> During the town hall meeting on Nov. 12, 2009, community members voiced concerns with the current ten-point criteria. Some community members have firsthand knowledge police abuse of certain criterion. Additionally, community members of color want a chance to have input related to these factors because of the impact it has on their communities. *Id.*

choosing to be a part of the Gang Oversight and Drug Council.<sup>149</sup> Given the abundance of government representatives on the Council, two slots may be insufficient to ensure meaningful community input.

**B. ENSURE GREATER ACCOUNTABILITY AND OVERSIGHT OF DATA PRACTICES**

Protocols and standards for entering an individual's name/data into a gang database should be established and more uniform. This information should be clearly articulated in standards related to gang databases (i.e. Minn. Stat. § 299C.091) and gang database operational manuals. Additionally, there is a need for determining who has the authority to enter a person's data into a gang database since this is currently unclear. For example, does any member of law enforcement have the authority to enter names into gang databases? Do only members of gang strike forces have the authority to enter names/data into gang databases? Is supervisory approval necessary before an officer is allowed to enter names into gang databases? What standard of proof is used to ensure accuracy of information? Who provides proper oversight and accountability for data that is entered into the system? What checks and balances are in place to ensure accuracy of the information entered into gang databases? In order to ensure transparency, accuracy, proper oversight, and accountability of gang databases, clear and objective standards, uniform policies and procedures should be put into place.

**C. PROVIDE TIMELY NOTICE AND HEARING REQUIREMENTS FOR "DOCUMENTED" GANG MEMBERS**

Timely notice is not only an important procedural policy that should be incorporated into the Gang Pointer File and GangNet operational standards, but could also be interpreted as a requirement.<sup>150</sup> Adding (or enforcing compliance with) a clear notification requirement is instrumental in protecting both the government's and the individual's interest, while still

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<sup>149</sup> See Minn. Stat. § 299A.641, subd. 2 (2009).

<sup>150</sup> Minn. Stat. § 13.04, subd. 2 (2009).

administering justice. There are three main incentives to having a notification requirement for the Gang Pointer File and GangNet. First, notice improves the accuracy of gang databases and prevents the commission of error during the documentation process.<sup>151</sup> Second, the notice requirement can help alleviate the legal and social consequences associated with being placed in a gang database for those who have been misidentified or who are no longer in a gang. And third, notice can help with intervention and prevention of gang membership in legitimate cases; especially for vulnerable youth.

As a result, a notice requirement will improve the accuracy of gang databases. The ability to contest data will work as a safeguard to prevent enhanced criminal and/or civil penalties against those erroneously placed in gang databases.<sup>152</sup> A notice requirement will therefore help increase database accuracy and improve the efficacy of databases as a “tool in policing and prosecuting gang crime.”<sup>153</sup>

A hearing requirement<sup>154</sup> may help alleviate some of the legal and social consequences associated with being placed in a gang database for those who have been mislabeled as a

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<sup>151</sup> See 2 STAN. J. CIV. RTS. & CIV. LIBERTIES 115, 131.

<sup>152</sup> See 42 COLUM. J.L. & SOC. PROBS. 293, 332.

<sup>153</sup> 2 STAN. J. CIV. RTS. & CIV. LIBERTIES 115, 115.

<sup>154</sup> Statutory precedence for hearings in cases of denial of carry and conceal permit; applies to applicants listed in criminal gang investigative database: See 624.714 CARRYING OF WEAPONS WITHOUT PERMIT; PENALTIES. subd. 12. Hearing upon denial or revocation. (a) Any person aggrieved by denial or revocation of a permit to carry may appeal by petition to the district court having jurisdiction over the county or municipality where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter must be heard de novo without a jury. (c) If an applicant is denied a permit on the grounds that the applicant is listed in the criminal gang investigative data system under section 299C.091, the person may challenge the denial, after disclosure under court supervision of the reason for that listing, based on grounds that the person: (1) was erroneously identified as a person in the data system;(2) was improperly included in the data system according to the criteria outlined in section 299C.091, subdivision 2, paragraph (b); or (3) has demonstrably withdrawn from the activities and associations that led to inclusion in the data system. (d) If the court grants a petition brought under paragraph (a), the court must award the applicant or permit holder reasonable costs and expenses including attorney fees.

gang member or who are no longer in a gang.<sup>155</sup> Moreover, the hearing requirement should be coupled with the ability to contest data. The ability to contest data will act as a safeguard to prevent enhanced criminal and/or civil penalties against those erroneously placed in gang databases.<sup>156</sup>

#### **D. NOTIFICATION OF PARENTS & YOUTH INTERVENTION**

##### *Prevention and Intervention*

Prevention and intervention are tools to reduce gang involvement and criminal gang activity within youth populations. In the past decade, legislation was introduced that proposed notification of parents when a youth is entered into a gang database.<sup>157</sup>

Minnesota has the opportunity to be proactive in curbing youth gang involvement by providing immediate notification to parents. The failure to provide parental notification is especially detrimental when youths are the subjects being entered into a gang database.<sup>158</sup> A parent or guardian who is notified when his or her child is legitimately entered into a database has the ability to intervene and to help steer a child in the right direction. Often, a parent or guardian simply does not know that his or her child may be involved with a gang or gang members.

The power to prevent gang membership can be very effective when measures are taken early. Rather than simply continue to compile information on youths and placing them into the Gang Pointer File or GangNet, a primary purpose of collecting data should be to intervene and deter gang membership as early as possible. Notifying a parent or guardian of a child at risk of gang involvement may help reduce the number of gang members and gang activity. Finally,

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<sup>155</sup> 2 STAN. J. CIV. RTS. & CIV. LIBERTIES 115,139.

<sup>156</sup> See 42 COLUM.J.L. & SOC. PROBS. 293, 332.

<sup>157</sup> See H.F. No. 3662 (1997).

<sup>158</sup> See generally Washington 43.310.005 (outlining the importance of collaboration between parents, educational, community and employment sector in addressing youth gang involvement).

youths are less likely to know their rights. Notifying a parent or guardian would help to safeguard against any abuse of a child's rights to due process.

In order to improve the odds of success for vulnerable youth, they must be “provided with services for their academic, economic, and social needs.”<sup>159</sup> According to the Office of Juvenile and Delinquency Prevention (OJJDP), the implementation of community, family, and school intervention models is the best way to prevent children from joining gangs and engaging in serious criminal activity.<sup>160</sup> Early intervention and prevention are key since suppression efforts alone will not stem the flow of gang-related violence.<sup>161</sup> Thus, prevention and intervention programs are sorely needed to intercept youth before they become entangled in gang activity.

The Minnesota judicial system, law enforcement, and community partners must develop strategic partnerships and alliances. The courts should refer suspected youth gang members to prevention and intervention programs. There are various models and types of programs, which includes: citizen mobilization, situational prevention, comprehensive community interventions, mentoring, and afterschool recreation programs.<sup>162</sup> See Appendix C for a list of programs currently available in the Metro area.

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<sup>159</sup> See generally OJJDP Comprehensive Gang Model, National Youth Gang Center, <http://www.iir.com/nygc/acgp/model.htm> (last visited Nov. 23, 2009). Furthermore, it is the obligation of the government and community to ensure that “at-risk youths” have enough “alternatives sources of protection and guidance available to them so that gangs never become their only option.” See 43 CAL.W.L.REV. 309, 354.

<sup>160</sup> See generally OJJDP Comprehensive Gang Model, National Youth Gang Center, <http://www.iir.com/nygc/acgp/model.htm> (last visited Nov. 23, 2009).

<sup>161</sup> See Claudia Rowe, *Anti-gang bill: Penalty over prevention: Removal of programs to steer youth away from crime disappoints backers*, SEATTLE POST-INTELLIGENCER, Mar. 13, 2008, available at [http://www.seattlepi.com/local/354778\\_gangleg13.html](http://www.seattlepi.com/local/354778_gangleg13.html). Take, for instance, the criticisms leveled at the newly enacted 2008 Criminal Street Gang Database drafted by the State of Washington. In Washington, the Mayor, legislative representatives, and state police officers all voiced concerns that suppression tactics alone do not curb gang-related activity because it is not a comprehensive approach to the underlying gang issue. Jennifer Shaw, the legislative director of the American Civil Liberties Union, also noted that if passing “suppression laws” worked, “we wouldn't have crime to begin with.”

<sup>162</sup> See OJJDP Juvenile Justice Bulletin, *School and Community Interventions to Prevent Serious and Violent Offending*, Oct. 1999, p. 4.

Such programs – if adequately resourced and utilized by law enforcement, courts, and community contacts – will provide a balance between suppression tactics, such as gang databases, and intervention and prevention models. This balance will holistically address issues that flow from gang involvement. However, these programs must be adequately funded and supported to ensure their continuity.

When youths are placed in the gang database system, law enforcement should:

1. Inform the parent or guardian immediately of suspected gang membership; and
2. Provide the parent or guardian with information on programs such as those listed in the Appendix or access to additional social services.

#### **E. AUDITING AND PURGING RECOMMENDATIONS**

##### **1. General Auditing**

The audit requirements in place for both the Gang Pointer File and GangNet provide little protection for individuals against errors, inaccuracies and misuse. Both the Gang Pointer File and GangNet need stricter audit systems that require audits regularly and reports of those audits to be accessible to the public. For the Gang Pointer File, Minn. Stat. § 299C.091, subd. 4 should be amended to reflect this recommended change. GangNet, must abide by stricter audit standards as well, if it continues to exist, and should publish the results of its audit reports to be accessible to the public.

This is especially important as long as the data in both databases remain “confidential” and therefore inaccessible to individuals about whom data is collected. In the absence of one’s ability to access the data maintained about him or her to ensure accuracy, and in the absence of one’s ability to contest the accuracy of the data maintained, the agencies must regularly review the information they store in gang databases. As stated earlier, individuals should have access to data about themselves kept in either the Gang Pointer File or GangNet. If they do not, the

agency collecting and storing the information must be held accountable for the accuracy of the data that is maintained in order to protect individuals from being mislabeled and suffering the consequences of being in a gang database. With no requirement that law enforcement must publish all audit reports, there is no way of ensuring that law enforcement agencies are actually conducting audits on a regular basis and in a timely manner.

## **2. Special Audit of Metro Gang Strike Force Entries into Gang Databases**

A special audit of entries made by the Metro Gang Strike Force into the Gang Pointer File and GangNet is necessary. The alleged corruption of the Metro Gang Strike Force has arguably spread far and wide.<sup>163</sup> There is little reason to assume the administration of the Gang Pointer File and GangNet, which may have been one of the task force's primary duties, is immune from that corruption.<sup>164</sup> While maintenance may be an additional cost to the agencies conducting the audits, the damage is far greater for every individual wrongly or inaccurately entered into one of the gang databases. The interest of justice requires remedying any potential misuse of these systems and providing appropriate relief for impacted communities. Therefore, auditing reports should be published and made available to the public.

## **3. Purging**

The purging requirements of GangNet are especially concerning, given that a person in GangNet is exposed to collateral consequences for a much longer period of time – ten years.<sup>165</sup> Also, the chances that a person remains in the database for longer than ten years are also greater,

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<sup>163</sup> See generally Andrew Luger & John Egelhof, Report of the Metro Gang Strike Force Review Panel, (Aug. 20, 2009).

<sup>164</sup> *Behind the scenes with the gang strike force* (Minnesota Public Radio broadcast, Tim Nelson, Aug. 5, 2009) (“A third of the report describes one of the strike force's main police efforts—creating a computer database that includes the names of, and information on, nearly 17,000 gang members as of January 2009. The report says the strike force made documenting gangs one of its top priorities last year. As a result, the number of people in the gang database grew by about 13 percent.”).

<sup>165</sup> See Appendix A, GangNet Operational Standards, Review/Purge.

since criteria for resetting the ten year period is much less stringent than it is for the Gang Pointer File. Thus, specific guidelines for purging data, auditing procedures/policy and mandatory publishing of such data will improve accountability and validity of the gang databases.

**F. DETERMINE WHETHER GANGNET SHOULD REMAIN IN EXISTENCE**

Perhaps one of the most urgent questions surrounding the use of GangNet, which contains data on nearly 17,000 individuals, is whether it is specifically authorized to exist, as it stands in its current form. The Data Practices Act requires that “collection and storage of all data on individuals be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.”<sup>166</sup> While a gang database may be a useful tool for law enforcement to combat criminal gang activity, there is arguably an adequate database already in place to achieve that purpose: Namely, the Gang Pointer File.

Although GangNet is supposed to be a compilation of suspected gang members, government agencies — most notably law enforcement and the judiciary — arguably treat the two databases as one in the same.<sup>167</sup> Since a person may arguably be placed in GangNet based merely on law enforcement’s suspicion, this increases the chances that a person is mislabeled and may unfairly suffer the same consequences as actual gang members engaged in criminal gang activity. While the information in the Gang Pointer File System is classified as “confidential” by statute,<sup>168</sup> there is seemingly no statutory authority classifying data in

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<sup>166</sup> Minn. Stat. § 13.05, subd. 3 (2009).

<sup>167</sup> Gottfried, *Community Forum on St. Paul Gangs*, *supra* note 94, at B3 Local (describing a town hall meeting where police officers answering the community’s questions spoke of the Pointer File System and GangNet interchangeably and were unable to answer community members’ questions about the differences between the two databases).

<sup>168</sup> Minn. Stat. § 299C.091 (2009).

GangNet. Without a specific statutory classification, Ramsey County has arguably implemented its own classification of the data.<sup>169</sup>

At a recent town hall meeting community members advocated for GangNet to be dismantled due to their concerns related to GangNet's accountability, reliability and accuracy.<sup>170</sup> Due to the over-representation of people of color in GangNet, there is a perception that racial bias may impact which individuals are entered into the database. Also, community members challenge the low threshold for entry into the system since an individual is only required to meet one of the ten-point criteria. Additionally, there appears to be a low level of oversight and accountability for the administration and maintenance of GangNet. Questions were raised such as: Can all ninety-six agencies enter data into GangNet? Who provides oversight of the auditing and purging procedures?

Based upon a lack of clarity regarding these issues, community members believe that there is a high level of misuse of the database occurring which could lead to inaccuracies in the database. This is of imminent concern as the number of individuals listed within the gang database continues to rise. During this past year alone, there has been a thirteen percent (13%) increase in the number of individuals listed in GangNet; which accounts for over 1,000 people being entered into the system.<sup>171</sup> Thus, the sentiments of community members and unanswered questions related to the data practices of GangNet may warrant GangNet being dismantled.

## **II. CONCLUSION**

The use of gang databases has had a disparate impact on communities of color throughout the state of Minnesota. The current ten-point criteria used to label individuals as gang members

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<sup>169</sup> Appendix A, GangNet Operational Procedures.

<sup>170</sup> Gangs of St. Paul III, Town Hall Meeting Nov. 12, 2009.

<sup>171</sup> *See generally* "Behind the scenes with the gang strike force" (Minnesota Public Radio broadcast, Tim Nelson, Aug. 5, 2009).

seem subjective and have caused legitimate concerns from community members. In order to alleviate some of these concerns associated with the gang databases, the foregoing recommendations should be adopted.



## APPENDIX A

### GangNet Operational Standards



### **GangNet Operational Standards**

#### **Status of GangNet Data**

GangNet is owned and administered by the Ramsey County Sheriff's Department.

GangNet and the underlying documentation, including reports, field interview cards and photographs should be handled in accordance with the following provision:

Data maintained by a law enforcement agency are confidential data on individuals as defined in Minn. Stat. 13.02, subd. 3, but may be released to criminal justice agencies.

As discussed above, "criminal justice agencies" are defined in the Minnesota Government Data Practices Act to include:

All state and local prosecution authorities, all state and local law enforcement agencies, the Sentencing Guidelines Commission, the Bureau of Criminal Apprehension, the Department of Corrections, and all probation officers who are not part of the judiciary.

#### **Gang Member Submission Criteria**

According to Minnesota Statute 609.229, a criminal gang is defined as a group of three or more persons who have a common identifying sign, symbol or name, and whose members individually or collectively engage in or have engaged in a pattern of criminal activity. At least one of the ten-point criteria developed by the Criminal Gang Oversight Council must be documented.

Agencies entering information into the system on individuals shall maintain documentation that adequately supports each entry. Documentation files shall be organized and thorough. All gang documentation is subject to a random audit by the GangNet Administrator.

#### **Access Requirements**

Use of the system is limited to criminal justice agencies that have been subject to character or security clearance by the user agency and approval of the Administrator. Each individual user shall obtain their own password and only sign on with their own

password. No one shall give their password to anyone else to use. Only those individuals who are employed by a criminal justice agency as defined in Minn. Stat. 13.02, subd. 3a, and who have been properly trained in the use of GangNet and the related policies and procedures will be allowed access to GangNet information. If information is received that a user or agency does not meet these requirements they can be denied access.

#### **Process to gain access to GangNet**

Individuals' members of a criminal justice Agency may make written application on Ramsey County GangNet User agreement. The Agency the individual is employed by must have an agency agreement signed and on file before an individual can apply.

#### **Data Dissemination**

Release of GangNet data is governed by Minn. Stat. 13.02, subd. 3a, 13.02, subd. 7, 13.82 subd. 7, and 299c.091, subd. 2. Information in the system is confidential and may only be released to criminal justice agencies. Recipients of GangNet information must have a need and a right to know in performance of a criminal justice function. Printing information is prohibited unless special circumstances arise. Users will be held accountable as to who has access to printed material and for what purpose it is to be used. User agency representatives and the Administrator should set procedures as to dissemination and shredding. If users have any questions about sharing GangNet information, they should contact the GangNet Administrator. If information is received that a user or agency has shared GangNet information in violation of these requirements they will be subject to the sanctions below.

#### **Review/Purge**

Information retained in GangNet will be reviewed and validated for compliance with submission criteria. Information entered into the system that cannot be validated will be purged from the system. A record that has been entered in error, either through challenge or by improper validation, shall immediately be brought to the attention of the GangNet Administrator for purging. Subject data in GangNet is purged when subjects are gang free for ten years and not convicted of a gross misdemeanor or a felony. If an individual request to be removed from GangNet and that individual has not been incarcerated, has been gang free and has not been convicted of a gross misdemeanor or a felony for five years that individual will be purged from the GangNet system.

#### **Unauthorized Disclosure**

Users of GangNet are prohibited from unauthorized disclosures of any and all training materials, operation manuals, user guidelines and user manuals.

### **Security**

Equipment used to access or store data for GangNet must be located in a secure setting to prevent vandalism, sabotage, and unauthorized access. Use of the system is limited to law enforcement and authorized non-sworn personnel who have been subject to character or security clearance by the employing criminal justice agency and have been approved by the Administrator, as defined in Minn. Stat. 13.02, subd. 3a.

### **Sanctions**

The Ramsey County Sheriff's Department is responsible for overseeing system discipline and conformity with rules, regulations and operating procedures. Violations of any laws, rules, regulations or the Operational Standards by GangNet users may result in any of the following sanctions:

- Letter of censure
- Suspension of service: This may be for varying lengths of time and/or may include suspension for specified database or system services.
- Removal of service/disconnection from system

APPENDIX B

Correspondence with Law Enforcement Agencies for Gang Report (Gang Pointer File, GangNet) as of 11/18/09 (FAO + JS)				
Contact	Date Sent	Correspondence Type	Response	Date of Response
<b>Commissioner Michael Campion Department of Public Safety</b>	Sept. 25, 2009	Letter	Letter (from E. Joseph Newton, General Counsel) stating DPS does not have any information on GangNet Operations or Procedures; suggested contacting Strike Force Advisory Board	Oct. 6, 2009
	Sept. 22, 2009	Phone Call	Left message – calls not returned	As of Nov. 18, 2009
<b>Bob Fletcher Ramsey County Sheriff</b>	Sept. 25, 2009	Letter	Letter (from Holli Drinkwine) included GangNet’s Operational Procedures; cc’d Steve Lydon in his response	Oct. 12, 2009
	Sept. 22, 2009 Oct. 5, 2009 Oct. 20, 2009	Phone call	Left messages – calls not returned	As of Nov. 18, 2009
<b>Chief John Harrington St. Paul Police Department</b>	Sept. 25, 2009	Letter	No response	As of Nov. 18, 2009
	Sept. 22, 2009 Oct. 1, 2009 Oct. 12, 2009	Phone Call	Left messages – calls not returned	As of Nov. 18, 2009
<b>Commander Tina McNamara St. Paul Police Department Gang Unit</b>	Sept. 25, 2009	Letter	Response: Phone call (left voice message at clinic) (No letter response)	As of Nov. 18, 2009
	Sept. 22, 2009 Oct. 1, 2009 Oct. 5, 2009, Oct. 12, 2009	Phone Call	Response: left voice mail at Clinic on Sept. 24, we called her back later that day, left voice mail, called back again on Oct. 1, officer said she was gone for a few days, she returned our call on Oct. 5, left message with KMA that “she [JS] already knows who to contact at Ramsey County but would not let KMA know who at Ramsey County should be contacted, did not return any further phone calls from FAO or JS	Sept. 24, Oct. 5, 2009
<b>Superintendent Tim O’Malley Bureau of Criminal Apprehension</b>	Sept. 25, 2009	Letter	Response: Had David Johnson respond – phone call	Oct. 2, 2009
	Sept. 22, 2009	Phone Call	Left message – no response	As of Nov. 18, 2009
<b>David Johnson Executive Director, MNJIS</b>	Sept. 25, 2009	Letter	Response: E-mail	Oct. 2, 2009
	Sept. 22, 2009	Phone Call	Response: Phone call, talked about Gang Pointer File (calling on behalf of Tim O’Malley)	Oct. 2, 2009
<b>Steve Lydon Ramsey County Sherriff’s Office Director</b>	Sept. 25, 2009	Letter	Response: none (cc’d in Fletcher’s response)	As of Nov. 18, 2009
	Sept. 22, 2009 Oct. 1, 2009	Phone call	Left messages - no responses	As of Nov. 18, 2009

APPENDIX C  
Metro Area Programs

Below is a sample representation of programs currently available in the Metro area:

1. Boys & Girls Club (Gang Prevention/Intervention Through Targeted Outreach)  
1620 Ames Avenue  
Saint Paul, MN 554106  
651.773.5654

The Boys and Girls Club has developed a gang prevention and intervention program that targets youth from the age of six to eighteen.<sup>1</sup> This program works through referrals from schools, courts, law enforcement, and community youth services to identify and recruit delinquent youth or those at risk into Club programs and activities. Moreover, this program is sponsored by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice

2. The Link (Project Potential: Gang Intervention Initiative)  
1210 Glenwood Avenue  
Minneapolis, MN 55405  
612.871.0748  
www.thelinkmn.org

The Link's Project Potential supports the youth involved in gangs and the family members, probation officers, teachers, and community contacts who tackle the issue of gang involvement. The Link's staff works one-on-one with at risk youth to reduce gang activity and provide positive activities and opportunities to curb the gang involvement. Out of the 68 "gang-involved youth" that The Link worked with in 2008, 98% created a plan for reducing gang involvement, "93% reported or showed a reduction in gang-related behavior, and 89% improved school attendance."

3. Chicanos Latinos Unidos En Servicio (CLUES).

Saint Paul Office	Minneapolis Office
797 East 7th Street	720 East Lake Street
St. Paul, MN 55106	Minneapolis, MN 55407
651.379.4200	612.746.3500

CLUES has a holistic approach to assisting Latino youth and families with gang intervention, employment and mental health services. CLUES offers "culturally proficient behavioral health and human services" to help support at risk youth that include mental health services, financial empowerment, employment services, chemical health services, educational services, and family services.

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<sup>1</sup> Boys & Girls Club of the Twin Cities, Specialized Programs,  
[http://www.boysandgirls.org/specialized\\_programs.asp](http://www.boysandgirls.org/specialized_programs.asp) (last visited Nov. 13, 2009).

4. Brotherhood Inc. (in development by Aurora/St. Anthony Neighborhood Development and community partners)

Brotherhood Inc. is a reintegration and prevention program. Modeled after Los Angeles based Homeboy Industries, the largest gang intervention program in the country, Brotherhood Inc. takes a holistic approach to rehabilitation by offering participants comprehensive, culturally sensitive social services, educational opportunities and on-site employment.

5. One Family One Community Inc.

1542 Marion Street, Suite 108  
St. Paul MN 55117  
612.225.7203

One Family One Community Inc. provides a holistic to gang prevention and intervention. The staff at One Family One Community Inc. attempt to transform the lives of at-risk youth by providing educational opportunities, mentoring, and building both life and entrepreneurship skills.

6. African American Leadership Council

270 North Kent Street  
St. Paul, MN 55102  
651.797.2954  
651.470.0266

7. Youth In Transition (Y.I.T.)

Dayton's Bluff Rec. Center  
800 Conway Street  
St. Paul, MN 55106  
651.793.3885

# **Evaluation of Databases in Minnesota & Recommendations for Change**

## **EXECUTIVE SUMMARY**

**Submitted by:**



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**In Collaboration with:**

Saint Paul NAACP

## INTRODUCTION

Within the Twin Cities, constituents have voiced concerns about the methods and procedures followed by law enforcement agencies in their use of gang databases in Minnesota. Community members have raised concerns regarding the scope of the ten-point criteria and the impact it has had, and continues to have, on those who have been mislabeled as gang members or are no longer part of a gang. In response to these concerns, this Executive Summary will:

- I. Provide an overview of the two gang databases, Gang Pointer File and GangNet;
- II. Highlight the various issues involving the use of gang databases; and
- III. Address community concerns and offer recommendations for change.

These proposed recommendations will help to balance public safety and community concerns; while improving accountability, reliability, and trust between law enforcement and the communities they seek to serve.

## PART I. OVERVIEW OF GANG POINTER FILE AND GANGNET

### Brief Overview of the Minnesota Criminal Gang Pointer File

The Gang Pointer File was created to provide a database of alleged gang members and to serve as an investigative tool. Pursuant to Minn. Stat. § 299C.091, the Minnesota Legislature authorized the Bureau of Criminal Apprehension (BCA) to “administer” and “maintain” a “computerized criminal gang investigative data system.” The system is called the Minnesota Criminal Gang Pointer File (Gang Pointer File) and consists of data on individuals whom law enforcement agencies determine are or may be engaged in criminal gang activity.”<sup>1</sup> As of 2008, there were 2,438 individuals listed in the Gang Pointer File Database.<sup>2</sup>

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<sup>1</sup> See Minn. Stat. § 299C.091 (2009).

<sup>2</sup> 2008 Annual Report, Metro Gang Strike Force, p. 20 (*available at* <http://www.leg.state.mn.us/docs/2009/other/090568.pdf>).

To be placed in the Gang Pointer File, an individual must meet specific criteria.<sup>3</sup>

### **Development of Ten-Point Criteria**

Minnesota Stat. § 299A.641 allows for the establishment of the Gang and Drug Oversight Council to “provide guidance related to the investigation and prosecution of gang and drug crime.”<sup>4</sup> The Council is authorized by statute to “create criteria for identifying the characteristics of gang membership.”<sup>5</sup> The Gang and Drug Oversight Council drafted and adopted the use of ten-point criteria to identify potential gang members.<sup>6</sup>

### **Brief Overview of GangNet**

GangNet was originally established to act as a feeder to the Gang Pointer File and as a way to pre-identify potential gang members who had met at least one of the ten-point criteria referenced below.<sup>7</sup> GangNet was developed in 1998 by the Ramsey County Sheriff’s Office through funding provided by the Minnesota Office of Public Safety. The Ramsey County Board approved receipt of the funding for the creation of GangNet. Notably, GangNet is used by 96 agencies statewide.<sup>8</sup> As of 2008, GangNet included data for 16,764 individuals.<sup>9</sup>

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<sup>3</sup> At least 14 years of age; have been convicted of a gross misdemeanor or felony; or have been adjudicated or has a stayed adjudication as a juvenile for an offense that would be a gross misdemeanor or felony if committed by an adult;<sup>3</sup> and have met at least three of the criteria or identifying characteristics of gang membership developed by the Gang and Drug Oversight Council under Minn. Stat. § 299A.641, subdivision 3, clause (7).<sup>3</sup>

<sup>4</sup> Minn. Stat. § 299A.641, subd. 1 (2009).

<sup>5</sup> Minn. Stat. § 299A.641, subd. 3(7) (2009).

<sup>6</sup> *See generally* Minn. Stat. § 299C.091, subd. 2(b)(1) (2009). Subject admits to being a gang member; is observed to associate on regular basis with known gang members; has tattoos indicating gang membership; wears gang symbols to identify with a specific gang; is in a photograph with known gang members and/or using gang-related hand signs; name is on gang document, hit list, or gang-related graffiti; is identified as a gang member by a reliable source; arrested in the company of identified gang members or associates; corresponds with known gang members or writes and/or receives correspondence about gang activity; writes about gang (graffiti) on walls, books and paper.<sup>6</sup>

<sup>7</sup> *See generally* Mara H. Gottfried, *Database on Gangs: Just How Accurate? Critics Raise Questions About the Secret List, Including Who’s on It*, ST. PAUL PIONEER PRESS, Sept. 20, 2009 at A1.

<sup>8</sup> *Id.*

<sup>9</sup> *See* 2008 Annual Report, Metro Gang Strike Force, p. 26.

The standards for law enforcement to enter a person's data into GangNet are less stringent than the criteria needed for law enforcement to enter a person's data into the Gang Pointer File.<sup>10</sup>

## **PART II: KEY FINDINGS**

### 1. *Over-representation of people of color in Gang databases*

The use of gang databases in Minnesota disproportionately affects communities of color. African-American residents of Minnesota are particularly impacted. For example, although African-Americans represent less than five (5) percent of the population in the State of Minnesota, they represent 53 percent of those listed in the Gang Pointer File (1,165);<sup>11</sup> and 42.4 percent of those listed in GangNet, which is an alarming 7,108 entries in the database. Notably, 13 percent of those listed in GangNet are Hispanic (2,180); 18.6 percent are Asian (3,120); and 18.5 percent are White (3,108).<sup>12</sup>

### 2. *Gaining Access to stored data is a challenge for individuals*

Criminal justice agencies do not seem to be required by Minn. Stat. § 299C.091 to give an individual notice when he or she has been entered into the Gang Pointer File or GangNet. Based upon anecdotes from community members, notice is not being given as a practical matter when one's data is being collected, stored and updated in to gang databases. Additionally, neither youths, nor their parents or guardians are notified that information is being collected, observed, and entered into gang databases.<sup>13</sup>

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<sup>10</sup> To be placed in GangNet, an individual must meet just one of the ten point criteria. Unlike the Gang Pointer File, a person is not required to have been convicted of a felony or gross misdemeanor to be entered into GangNet. It also appears that there is no minimum age requirement, as there is in the Gang Pointer File. *See* Appendix A, GangNet Operational Standards

<sup>11</sup> 2008 Annual Report, Metro Gang Strike Force, p. 8 (citation omitted).

<sup>12</sup> *See* 2008 Annual Report, Metro Gang Strike Force, p. 20, 26.

<sup>13</sup> *See generally* Minn. Stat. § 299C.091; *see also* Appendix A, GangNet Operational Standards.

### 3. *Potential for Collateral Consequences*

There are serious legal and social consequences resulting from placement of one's data into gang databases. The implications of gang membership substantially affect the opportunities and freedoms of a person convicted of a misdemeanor or felony.<sup>14</sup> Potential legal and social effects include "increased probability of conviction, longer sentences, loss of employment, and other stigmatizing effects."<sup>15</sup> Minnesota courts have adopted the enhanced sentences standard, meaning that they may grant an upward departure for those who are linked to being a member of a gang.<sup>16</sup>

## **PART III. COMMUNITY CONCERNS AND RELATED RECOMMENDATIONS**

As noted in the introduction, the community has raised a variety of concerns regarding the impact of gang databases, particularly within poor communities of color. Some of the issues that have been identified and articulated by members of the community include, but are not limited to:

1. *Concerns about Racial Profiling;*
2. *Lack of Parental Notification when a child's data has been entered in a gang database;*
3. *Difficulty verifying whether one's data is included in a gang database;*
4. *Lack of knowledge regarding how one might contest data;*
5. *Concern for trustworthiness of data entered by Metro Gang Strike Force;*
6. *Denial of employment opportunities;*<sup>17</sup>
7. *Denial of Right to Access Carry and Conceal Law for employment purposes.*<sup>18</sup>

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<sup>14</sup>See Joshua D. Wright, *Dangerous Data: The Use and Abuse of Gang Databases Introduction...Part III.*, The Constitutional Failure of Gang Databases, 2 STAN. J. CIV. RTS. & CIV. LIBERTIES 115, 118.

<sup>15</sup> *Id.* at 115.

<sup>16</sup> See generally Minn. Stat. § 609.229 (2009).

<sup>17</sup> This distinction has affected numerous people, including James Shelton Jr. , 22, attends Metropolitan State University and aspires to be a probation officer.

<sup>18</sup> Ice Demmings, an admittedly ex-gang member, claims that the purging requirements are not being followed. Demmings attempted to join the National Guard but was not eligible because he is still currently listed as an active gang member although he has not been in a gang for thirteen years.

**Key Recommendations:**

In response to community concerns and in conjunction with community stakeholders, we are suggesting the incorporation of the following recommendations:

- (1) collaborating with community partners to change and/or re-define the ten-point criteria;
- (2) ensuring a meaningful and sustainable mechanism for obtaining community input;
- (3) ensure greater accountability and oversight of data practices;
- (4) providing notice and hearing requirements for documented gang members;
- (5) implementing prevention and/or intervention models;
- (6) providing public notice of auditing and purging schedules to ensure compliance and consistency;
- (7) conducting a special audit of the gang databases previously administered by the Metro Gang Strike Force; and
- (8) determining whether GangNet should remain in existence.