

- SUBJECT:** Police sharing of information on gang members
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Place, Talton, Farrar, Hudson, Nixon, Pickett, Pitts, Solis
0 nays
1 absent — Greenberg
- WITNESSES:** For — Ann Diamond, Tarrant County criminal district attorney; Sgt. S.C. Van Vlech, Fort Worth Police Department; Kimbra K. Ogg, City of Houston Anti-Gang Office; Chuck Brawner, Harris County Gang Related Tracking System
Against — None
- DIGEST:** HB 466 would add Chapter 61 to the Code of Criminal Procedure to allow a criminal justice agency to compile criminal information into a system by computer or otherwise for the purpose of investigating or prosecuting the criminal activities of criminal combinations (three or more persons who collaborate in carrying on criminal activities—gangs). Criminal information relating to a child associated with a combination could be compiled and released regardless of the age of the child.
- A criminal justice agency could release the criminal information to another criminal justice agency, a court or an adult defendant entitled to the information. A criminal justice agency could also release the information relating to a child associated with a combination to a criminal justice agency or court. A criminal justice agency could release the information to an attorney representing a child if the information was material to the proceeding and not privileged under law.
- A criminal justice agency or court could only use the criminal information for the administration of criminal justice, and a child’s attorney or an adult defendant could only use the information for defense purposes. A person who knowingly used the criminal information for an unauthorized purpose or released the information to an unauthorized person or agency would

commit a Class B misdemeanor, with a maximum penalty of 180 days in jail and a \$2,000 fine.

The bill would take immediate effect if approved by two thirds of the membership of each house.

**SUPPORTERS
SAY:**

HB 466 would allow the police to share gang-related criminal information between counties about adults and youths. Although police can share information on adults now, current law prohibits the police in, for example, Tarrant County from sharing information about known juvenile gang members with police in Dallas County. This prohibition thwarts police attempts to apprehend gang criminals and track particular gang members' movements around the state.

Juveniles may commit a crime in Dallas County and then return to their Tarrant County home secure that Dallas County authorities lack access to the Tarrant County juvenile gang member files, which usually include information on gang colors, types of crimes usually committed by that particular gang, names and descriptions of members, the cars they drive, etc. This information can be very helpful in identifying and apprehending the responsible gang members.

The information would only be used as an investigatory tool by the law enforcement officers. A prosecutor would, of course, still have to prove beyond a reasonable doubt that an individual committed a crime even if that individual was included in a gang-related crimes database. Showing that a convicted individual participated in gang related criminal activities would appropriately allow a court to enhance that individual's punishment in the hope that he or she would be deterred from any further gang involvement; however, to show gang involvement, the database could be used only to allow the appropriate knowledgeable police officer or other person listed in the database to testify about their personal knowledge of the individual's gang involvement. The database would not substitute for other evidence.

Only *criminal* information relating to a child associated with a gang could be entered into the database system to be shared among law enforcement agencies. The mere fact that a person was a friend of a gang member

would not qualify that person for entry onto the gang database. Large counties, including Harris, that have databases require a certain number of criteria to be met to make sure the person is a criminally involved gang member before entering a person into the gang database. These databases also have safeguards to prevent the unauthorized use of the information, including a mechanism that allows another person to identify which police officer requested information from the system on a particular gang member.

**OPPONENTS
SAY:**

HB 466 would create a situation in which every time a crime was committed the police would be authorized to "round up the usual suspects." The police would no longer need to have particular probable cause or reasonable suspicion for picking up a person suspected of criminal activity, but would only need to determine that the person was a gang member in the database belonging to a gang associated with that particular crime.

Most disturbing is that First Amendment rights to freedom of association might be infringed by HB 466. For example, the juvenile might be in the database only because he regularly played basketball with gang members. He might not be a gang member at all, or he might be a gang member who has not taken up a criminal life. While the bill only allows police to enter criminal information into the database, some police might feel that mere association with a gang member is criminal enough. No criteria for determining when persons have criminally implicated themselves through association sufficiently for inclusion in the database are included in the bill.

While some counties have developed guidelines to ensure that people are not fingered as criminally involved gang members without good cause, there is no guarantee that other counties will develop proper criteria to protect an individual's constitutional right to freedom of association. Police should not be given a blank check to monitor people's personal relationships.

NOTES:

On March 22 during consideration of HB 327 by Goodman et al., juvenile justice revisions, the House by 79-67 adopted an amendment by Rep. Brimer similar to HB 466. The amendment would allow local criminal justice agencies to compile criminal information on children, regardless of their age, into a local system for the purpose of investigating or prosecuting the criminal activities of criminal combinations (gangs). The information

could be released to other local, state or federal criminal justice agencies and any court having jurisdiction over the child. The Senate Criminal Justice Committee substitute for HB 327, which is on the Intent Calendar for Senate consideration this week, includes a similar provision.

The companion bill, SB 1124 by Cain, was referred to the Senate Criminal Justice Committee.