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On Gang Databases

Louise Carhart

Gang databases have a long history in the modern policing system. In use for close to thirty years, the databases are common across the country as an auxiliary tool for both local and federal law enforcement.

The proliferation of databases has brought heavy criticism from advocates due to the disproportionate impact on communities of color. While Chicago's struggle with gang violence is well-documented, the reliance on the gang database in the past few decades has not resulted in a lasting solution. Importing systems developed in other jurisdictions has had a disastrous effect on the subjects of gang investigations in Chicago. Without proper oversight, the Chicago Police Department has arbitrarily listed civilians as gang members and subsequently shared that faulty information with other law enforcement agencies. A lawsuit filed on June 19, 2018, challenged the database's use in CPD procedure.¹ In the three years since the original complaint was filed, CPD has promised to reform their use of the system but failed to show progress on that goal. The database has never been a reliable tool, as it was created to control Black and Latinx communities and cannot be separated from that purpose.

The first of the modern databases was the Gang Reporting, Evaluation, and Tracking System (GREAT), instituted in Los Angeles County in 1987.² The program was expanded state-wide in 1988 as the State Terrorism Enforcement and Prevention Act (STEP). The STEP Act defined the term gang for the first time in American legislative history, although most states use a similar but slightly different standard.³ Pursuant to the STEP Act, California lawmakers designed and implemented CalGang in 1997, despite concerns about the GREAT system.

On July 6, 1992, the United States Governing Accounting Office (GAO) released a letter to the sheriff of Los Angeles County at the time, Sherman Block.⁴ The letter directly addressed the lack of oversight of the database, which had never been audited. By 1992, the State had already begun developing the CalGang system and could not adequately speak to the integrity of

¹ *Chicagans for an End to the Gang Database et al. v. City of Chicago et al. Class Action Complaint*

² Lauren M. Pittman, *Constructing a Compromise: The Current State of Gang Database Legislation and How to Effectuate Nationwide Reform*, 106 Iowa L. Rev. 1513, 1515 (2021)

³ *Id.*

⁴ GGD-92019R 1 (1992-07-06) L.a. County Sheriff's Gang Tracking System

GREAT. This resistance to auditing and inability to verify information permeates gang databases, including and especially in Chicago.

The current system known as the Chicago gang database was developed out of an already arbitrary and faulty process. In the 1980's, the Chicago Police Department maintained a paper-based database that included pictures of listed civilians and handwritten cards with their information.⁵ In the 1990's, Chicago Police migrated this paper system to an online platform, called the Criminal History Record Inventory System (CHRIS). Though not specifically dedicated to logging gang members, CHRIS managed a list of gang-related individuals as part of its records.⁶ CHRIS was subsequently integrated into the Citizen Law Enforcement Analysis and Reporting system (CLEAR) in 2001. CLEAR, still in use, contains the same information from the paper-based system of the 1980's.⁷ None of the three iterations of the Chicago gang database had a notification system nor appeal procedures for listed civilians. As of April 2018, there were 163 civilians in their 70s or 80s in the CLEAR system.⁸ Because they cannot appeal their inclusion, many are denied certain firearm licenses, immigration benefits, and bonds that they otherwise would be entitled to.⁹

CLEAR is menu-driven, web-enabled, and searchable, making the information in the database easily accessible to local and federal law enforcement.¹⁰ The increased accessibility has a stunning effect on the use of the database, as CPD officers can now access the database from any agency screen, in any vehicle.¹¹ Two upticks in listings came after the implementation of CLEAR.¹² During Superintendent Philip Cline's tenure, from 2003-2007, 17,000 people were added to the database. When Superintendent Garry McCarthy was appointed in 2011, 15,000 people were added in one year.¹³ This trend has only

⁵ *Supra* note 1 at 11.

⁶ *Id.*

⁷ *Id.*

⁸ Mick Dumke, *Chicago's Gang Database is Full of Errors – And Records We Have Prove It*, ProPublica (April 19, 2018) <https://www.propublica.org/article/politic-il-insider-chicago-gang-database>.

⁹ *Supra* note 1 at 9.

¹⁰ *Tracked and Targeted: Early Findings on Chicago's Gang Database*, Policing in Chicago Research Group, (February 2017), 2. <https://soc.uic.edu/wp-content/uploads/sites/197/2018/07/Tracked-Targeted-0217-r.pdf>.

¹¹ *Id.*

¹² *Supra* note 1 at 14.

¹³ *Id.*

continued up until today. Besides the increased accessibility of CLEAR, the listing process had led to the over-reporting of gang members.

Vague, sweeping City ordinances govern the administration of gang charges that lead to listing on the CLEAR database. Chicago Municipal Code §8-4-015(d) defines various, arbitrary charges that can be used as reason to list civilians as gang members. Narcotics-Related Loitering, §8-4-017, is also cited as a possible qualifying crime in a June 7, 2015 Chicago Police Department Special Order.¹⁴ This Special Order, along with Special Order 10-02-02, created guidelines for CPD enforcement of anti-gang initiatives.¹⁵ CPD officers are responsible for observing members of a criminal gang engaging in gang loitering, which is defined as:

Remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.¹⁶

This definition imparts a high level of discretion to CPD officers who observe and interpret any gathering of people on the streets they patrol. Which areas are subject to gang enforcement relies heavily on the designation of “hot spots” by the CPD.¹⁷ Areas that are subject to heavier surveillance and enforcement of gang-related crimes are decided by whether it is “experiencing, or is about to experience, increased violence. This increase in violence may be due, for example, to a gang conflict or a dispute over a drug spot.”¹⁸ These subjective standards allow the CPD to justify increased surveillance and contacts within a particular area, with little room for oversight.

When encountering what an officer deems to be “gang loitering,” they are authorized to cast a wide net for alleged gang members. Listing on the database occurs as the result of either a gang arrest or a gang contact.¹⁹ Gang arrest cards are filed when an officer takes into custody a civilian who is designated as a gang member, while gang contact cards indicate the listing of a non-arrested

¹⁴ Superintendent Garry F. McCarthy, “Gang and Narcotics-Related Loitering” Special Order S10-02 (June 17, 2015). <http://directives.chicagopolice.org/directives/data/a7a57be2-128884f1-9d212-8894-7cf08ab5b5062cb9.html>.

¹⁵ Superintendent Garry F. McCarthy, “Selection of Designated Enforcement Areas” Special Order S10-02-02 (June 17, 2015). <http://directives.chicagopolice.org/directives/data/a7a57be2-12bcfa66-cf112-bd05-8b11becc05997c4e.pdf?hl=true>.

¹⁶ Chicago Municipal Code §8-4-015.

¹⁷ *Supra* note 15 at 2.

¹⁸ *Id.*

¹⁹ *Supra* note 1 at 11.

person.²⁰ Any sworn officer of the Chicago Police may file a card, including School Resource Officers (SRO).²¹ The use of SROs to combat gang activity means that increased surveillance is a reality at home, in public, and at school for many of Chicago's students. Increasing the chances of a police encounter fundamentally disadvantages children within CPD-designated hot spots, and CPD is not hesitant to include civilians as young as nine years old.²² The impact of the gang database clearly affects Black and Latinx communities disproportionately and has been the subject of litigation as a result.

The class action complaint filed by Chicagoans for an End to the Gang Database, multiple Chicago community organizations, and three private individuals was a catalyst for raising awareness and advocating for a change to the CLEAR system.²³ The three individuals had been labeled gang members and denied various benefits, including a Firearm Owners Identification (FOID), I-Bond, and Deferred Action for Childhood Arrivals (DACA).²⁴ Alleging discriminatory impact and requesting declaratory and injunctive relief, the complaint aimed to eliminate the database altogether.

After more than two years, the complaint was voluntarily dismissed on September 2, 2020.²⁵ In the intervening period, the City of Chicago Office of Inspector General published a report in April 2019 that presented a systematic review of the database and police practices surrounding it.²⁶ The report echoed findings that had been made in 2017 by the Policing in Chicago Research Group, but the impact of a governmental agency investigation held much more sway over the negotiation process. CPD announced plans on February 27, 2020 to create a new database called the Criminal Enterprise Information System (CEIS).²⁷

This new system was meant to lessen the number of listings, but there is no indication of how the CEIS will handle gang cards currently used in CLEAR, or how the database will prevent racial discrimination. Judge Andrea

²⁰ *Id.*

²¹ *Review of the Chicago Police Department's "Gang Database"* City of Chicago Office of the Inspector General (April 2019), 15. <https://igchicago.org/wp-content/uploads/2019/04/OIG-CPD-Gang-Database-Review.pdf>.

²² *Id.* at 5.

²³ *Supra* note 1.

²⁴ *Id.* at 9-10; Nereida Moreno, *Immigrant sues Chicago, police for placing his name in gang database* Chicago Tribune (July 11, 2017).

²⁵ *Chicagoans for an End to the Gang Database, et. al. v. City of Chicago, et. al.* "Notice of Voluntary Dismissal of Organizational Plaintiffs' Claims" (September 2, 2020).

²⁶ *Supra* note 21.

²⁷ *Supra* note 25.

R. Wood of the Northern District of Illinois, Eastern Division raised concerns about the lack of information from CPD in her order granting a voluntary dismissal.²⁸ The organizational plaintiffs maintained a right to file a second lawsuit should CEIS not eliminate the discriminatory practices prevalent in CLEAR. Thus far, the threat of another lawsuit has not stopped CPD use of the CLEAR database or produced a clear alternative. The organization has not indicated whether it has stopped sharing database information with other agencies.²⁹

The current discourse surrounding the database concerns a second OIG report and a CPD response that both showcase the continued inaction on the part of the police. On March 31, 2021 the OIG published a follow-up report on the gang database, noting the lack of progress or even defined goals.³⁰ The report found that CPD has made minimal progress towards developing CEIS, has not defined the strategic value of a gang database, and has mislead the public on key policy concerns.³¹

In regard to misleading the public, CPD has failed to update the draft version of General Order G10-01-03 which dictates the policy goals for CEIS.³² Currently, the most recent version available on CPD's website is dated April 11, 2019.³³ In addition to the failure to define the utility and goals of CEIS, CPD has continued to use the outdated information in the CLEAR database. Consequently, individuals continue to have outdated information negatively affect their lives in tangible and potentially life-threatening ways.³⁴

So far, there has been a comment period that lasted one month, from April 11, 2019 until May 11, 2019, but CPD has not created or assigned an IT department to the task, set a timeline, or established managerial responsibil-

²⁸ *Id.* at 2.

²⁹ Justin Laurence, *Chicago Police Continue to Use 'Seriously Flawed' Gang Database Despite Pledging An Overhaul 2 Years Ago, Watchdog Finds* Block Club Chicago (April 2, 2021) https://blockclubchicago.org/2021/04/02/chicago-police-continue-to-use-seriously-flawed-gang-database-despite-pledging-an-overhaul-2-years-ago-watchdog-finds/?mc_cid=F761862028&mc_cid=D96477664.

³⁰ *Follow-Up Inquiry on CPD's "Gang Database"* City of Chicago Office of Inspector General (March 31, 2021) <https://igchicago.org/wp-content/uploads/2021/03/OIG-Follow-Up-Inquiry-on-the-Chicago-Police-Departments-Gang-Database.pdf>.

³¹ *Id.* at 6.

³² *Id.* at 7.

³³ *Criminal Enterprise Database- General Order G10-01-03* Chicago Police Department (April 11, 2019) <https://home.chicagopolice.org/wp-content/uploads/2019/04/Criminal-Enterprise-Database-DRAFT-11-APR-19-version-2.pdf>.

³⁴ *Supra* note 29.

ity.³⁵ After admitting that the information they relied on was flawed, CPD has failed to cease using that information to make arrests or process civilians they encounter.

In response to the 2021 OIG follow-up, CPD has turned to accusing the Inspector's office of eroding public trust instead of providing concrete answers to outstanding questions. Superintendent David O'Neill Brown responded in a letter to the OIG which focused on his concerns with the Follow-Up Report, not the questions posed by the OIG.³⁶ Brown stated that the project had been assigned to the Bureau of Counterterrorism and that training for vetting and inputting information for the new system will start in September of 2021.³⁷ However, Brown also stated that "a follow up report issued in a manner that contains outdated information and is incomplete contradicts these goals and fails the residents of City of Chicago."³⁸ Brown did not address the dearth of information available publicly or the continued use of the CLEAR database. He did not clarify whether information has been or will continue to be shared with other local and federal agencies. The concerns raised in the original 2018 lawsuit have not been adequately answered and as a result, the public trust in CPD has eroded.

³⁵ *Supra* note 30 at 6.

³⁶ David O'Neill Brown *RE: Follow-up Inquiry on the Chicago Police Department's "Gang Database"* Chicago Police Department (March 30, 2021) https://igchicago.org/wp-content/uploads/2021/03/Gang-Database-Follow-Up_CPD-Response.pdf.

³⁷ *Id.* at 2.

³⁸ *Id.* at 1.