



**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

331 Second Avenue South
Suite 900
Minneapolis, MN 55401

John Stuart
State Public Defender
612-349-2565
john.stuart@mnpd.us

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Ken Reed
Chair, Minnesota Violent Crime Coordinating Council
445 Minnesota Street #2300
St. Paul, MN 55101

Dear Chair Reed:

Thank you for the opportunity to speak to the VCCC regarding gang databases. I offer the following comments to accompany my presentation.

1. Due process requires notice and a hearing. Those identified in the gang database should get notice when their name is added and should be able to have a hearing if they contest being named as a gang member. The use of the criteria requires more due process because:
 - The criteria are vague. For example, if 10 young men are playing basketball on a playground, and 2 are gang members, and someone takes their picture, are the other 8 now "suspected gang members"? Is a blue hat a "gang symbol"?
 - The criteria affect protected classes of people disproportionately.
 - Some of the criteria infringe on protected speech, for example, "writing about a gang."
 - Several of the criteria do not have objective verification. For example, how do we know the informant is "reliable"?
 - The criteria are not being administered by a neutral party.

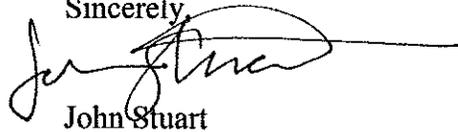
In addition, notice serves a preventive function.

2. Effective purging of names. The Gang Database will have rules about when a name is purged from the database – such as if the person has no record of gang activity and is a certain age. These purging rules are routine with gang databases but several studies suggest that purging often does not occur as designed. Police departments may be under-resourced and therefore unable to effect the purge, plus there is a natural tendency to believe that more data is always good. Unless a peace officer takes the affirmative step of noting that new gang activity has occurred, the name must be purged automatically by the system.

3. Independent audits. Public trust is a valuable and fragile thing. Auditing of police officers' use of the BCA's gang pointer file must be done by an independent auditor rather than the "business as usual" approach of having the audits completed within the law enforcement community.

4. Real sanctions for violation. If audits find repeated, willful violations of the rules governing creation and use of gang data, there must be serious sanctions in place. In 2003 when police officers wrongly gathered and used secret data kept in the MJNO database, it was clear that the existing misdemeanor sanctions in Minnesota's Data Practices Act were insufficient to discourage their behavior. In fact, no police officer ever faced any such sanction as a result of MJNO abuses coming to light. While Iowa imposes felony sanctions for willful violations of its criminal intelligence data laws (Iowa Code §692.7.2), a better approach might be to change the rules governing when the POST Board must suspend a peace officer's license.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stuart", with a long horizontal line extending to the right from the end of the signature.

John Stuart