



## **MINNESOTA VIOLENT CRIME COORDINATING COUNCIL**

**Gang Criteria Recommendation to the Commissioner of Public Safety  
[MN Statutes §299A.642, subd. 3(8)]**

**Adopted June 13, 2012**

## **BACKGROUND**

Pursuant to Minnesota Statutes § 299A.642, subd. 3(8), one of the duties of the Violent Crime Coordinating Council (“Council”) is:

“subject to approval by the commissioner of public safety, adopt narrowly tailored, objective criteria and identifying characteristics for use in determining whether individuals are or may be members of gangs involved in criminal activity. The Council shall review and update the criteria and characteristics adopted under this clause every two years with the objective to ensure effectiveness and relevance to the accurate identification of subjects actively involved in criminal gang activity. As part of its review process, the Council shall obtain input from members of communities that are impacted by criminal gang activity. Before adopting any changes under this clause, the Council must submit its recommendation to the commissioner of public safety for approval.”

### **HISTORY OF GANG CRITERIA IN THE STATE OF MINNESOTA**

The Minnesota Gang Strike Force and Criminal Gang Oversight Council were created in 1997 by Minnesota Statutes § 299A.64 “to eliminate the harm caused to the public by criminal gangs and their illegal activities within the state of Minnesota.” As a part of this initiative, the Council was charged by the enabling legislation with establishing criteria to aid in the identification of criminal gang members.

The Criminal Gang Oversight Council’s goal was to determine an objective and consistent set of identifiers that could be used throughout the state. The criteria were modeled after criteria used in other states around the country that have been accepted and utilized by police and the criminal justice system in those areas. The criteria are based on the premise that criminal gangs and gang members identify themselves through the use of an organizational name, symbols, hand signs, colors and language. These factors, in addition to criminal activity, were to help officers objectively identify and track gang organizations that were engaged in criminal activity. The criteria established at the time were as follows:

1. Admits gang membership or association.
2. Is observed to associate on a 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 a 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 activities.
10. Writes about gangs (graffiti) on walls, books and paper.

As a part of the establishment of the criteria, command staff at the Minnesota Gang Strike Force issued instructions to law enforcement personnel providing specific instruction on the assignment of each of the ten criteria. They also provided instructions as to how the criteria should be documented.

Also established in 1997 (by Minnesota Statutes § 299C.091) was the “Criminal Gang Investigative Data System” also known as the “Pointer File.” The Bureau of Criminal Apprehension was required to administer and maintain a computerized criminal gang investigative data system for the purpose of assisting criminal justice agencies in the investigation and prosecution of criminal activity by gang members. A law enforcement agency was allowed to submit data on an individual for inclusion in the system if the individual was 14 years of age or older and the agency had documented that: (1) the individual had met at least three of the criteria or identifying characteristics of gang membership developed by the Criminal Gang Oversight Council and (2) the individual had been convicted of a gross misdemeanor or felony or had been adjudicated or has a stayed adjudication as a juvenile for an offense that would be a gross misdemeanor or felony if it had been committed by an adult.

The original criteria have been unchanged and in effect since their establishment. The Gang and Drug Oversight Council reaffirmed the original criteria in May of 2007. The criteria have been evaluated by several academics and were reviewed and discussed as a part of the SF2725 Workgroup. This current effort, however, is the first legislatively mandated review of the existing criteria and recommendation for change.

### **REVIEW AND RECOMMENDATION PROCESS**

In June of 2011, the Council directed its Data Subcommittee (“Subcommittee”) to plan and implement a review of the current criteria and make recommendations for any needed changes. The stated goal was to have fair and objective gang criteria to help law enforcement effectively address violent offenders who threaten the safety of our communities. The Subcommittee was tasked to conduct a process that would maximize the opportunity for subject matter experts and community members to ask questions, voice concerns and offer recommendations. The process consisted of the following:

- ◆ **September 22, 2011** - A community forum was convened in St. Paul. A variety of stakeholder groups were asked to present their positions and audience members were allowed to ask questions and provide input. The following individuals addressed the audience and Council members:

Presenter

John Stuart  
Nekima Levy- Pounds  
Shellene Johnson  
Jim Franklin  
John Kingrey  
Dave Pecchia  
Russell Balanger  
Rich Neumeister

Affiliation

MN State Board of Public Defense  
University of St. Thomas  
MN Coalition for Battered Women  
MN Sheriffs Association  
MN County Attorneys Association  
MN Chiefs Association  
AMICUS  
Citizen

Written Statements Provided By:

American Civil Liberties Union (ACLU)  
Minnesota Sheriff’s Association  
Minnesota Department of Corrections – Office of Special Investigations

- ◆ **November 10, 2011** - A community meeting was conducted at Little Earth of United Tribes in Minneapolis. An overview of the gang criteria was presented and additional information related to the gang database was provided. An “open microphone” process was conducted with community members asking questions and providing input. University of St. Thomas students captured community concerns on flip charts and those notes were transcribed and provided to the Council and published on the VCCC website at: <https://dps.mn.gov/divisions/ojp/Pages/violent-crimes-coordinating-council.aspx>
- ◆ **December 1, 2011** - A community meeting was conducted at MLK Center in St. Paul. An overview of the gang criteria was presented and additional information related to the gang database was provided. An “open microphone” process was conducted with community members asking questions and providing input. University of St. Thomas students captured community concerns on flip charts and those notes were transcribed and provided to the Council and published on the VCCC website.
- ◆ **December 2011 – February 2012** - The Subcommittee reviewed all of the public and subject matter expert comments and authored a draft of the proposed criteria. The Council reviewed the draft, made several changes and adopted a final draft at its February 8, 2012 meeting.
- ◆ **February 1, 2012** – Subcommittee members met with the twenty-three commanders of drug and violent crime task forces located throughout the state to solicit their input in the establishment of the criteria.
- ◆ **February 23, 2012 - March 25, 2012** - The Council-adopted draft criteria were posted for written public comment. Eight individuals responded with written comments.
- ◆ **March 25, 2012 - present** - The Council reviewed the public comments and tasked the Subcommittee to meet again to further take the public’s input into account. The Subcommittee met in a lengthy session and took deliberate action to reduce ambiguity and to strengthen the proposed criteria. The further revised criteria were on the agenda to be reviewed, discussed and acted upon at the Council’s June 13 meeting.

### **SUMMARY OF COMMUNITY CONCERNS**

The most common community concerns expressed at community meetings as well as through written comments were as follows:

- Subjectivity of some of the current criteria.
- Repetitiveness of the current criteria.
- Concern that the “association” criterion disproportionately affects communities of color.
- Concern that young people who may mimic gang behavior and would end up being inaccurately defined as a gang member, e.g. dressing as a gang member would dress.
- Need for there to be evidence of what law enforcement personnel determine to be a criterion that has been met.

- Importance of criminal behavior being required to be labeled as a “gang member.”
- Belief that individuals who may be “on the list” who are now reformed and should be removed from any list identifying them as a “gang member.”

The Council’s intention was to focus on the establishment of criteria. Despite this, there were many questions, concerns and comments related to the creation, use, purging and auditing of the databases used in gang members investigations: specifically, the now defunct GangNet, and the legislatively created Gang Pointer File. Community member statements did, in some cases, reflect misperceptions on the part of the public as to the creation and use of authorized databases in terms of how they operate, who has access to the information, and to what use the information may be put. However, in many cases, citizens raised valid concerns and made helpful suggestions related to gang databases. The Council will provide those suggestions and input to the agency deemed responsible for the management of an authorized gang database.

Further, there was a strong consensus among the community members who spoke at the forums that law enforcement, upon learning about gang activity by a juvenile, should provide notification to the juvenile’s parents. There was also a suggestion that information on prevention and intervention resources be made available upon notification. The Council supports parental notification when it can be accomplished without jeopardizing public or officer safety.

### **RECOMMENDED CRITERIA**

The Council has now voted on the criteria to be recommended to the Commissioner of the Department of Public Safety and the criteria are contained in the ATTACHMENT to this document. Please note that each individual criterion must be established according to the definitions and instructions contained in the bullet points following the listed criterion.

After approval and adoption, we recommend that (1) training be conducted for all investigators and analysts that may be establishing or using the criteria, (2) the criteria be posted publicly to ensure transparency, and that, (3) implementation strategies regarding parental notification and gang prevention and intervention be addressed in subsequent steps for the purposes of crime prevention and public safety.

### **SUMMARY**

The establishment of gang criteria is a statutory duty of the Violent Crime Coordinating Council. The Council approaches this duty with a belief that maintaining a statewide standard is preferable to having individual agencies develop differing definitions and criteria.

The Council believes that the recommended 9-point criteria strike a balance between the needs of the criminal justice system, public safety and community concerns. All citizens are well served by a system that does not over-classify or under-classify gang members, and an objective set of criteria based on behavior and not appearance helps to achieve this.

Specifically, the proposed criteria:

- ✓ Recommend that a confirmed gang member must have been adjudicated or convicted of a crime of violence as defined in Minnesota Statutes § 624.712 (currently require any conviction for any gross misdemeanor or felony),
- ✓ Instruct that a single fact may not be used to satisfy multiple criteria,
- ✓ Eliminate “guilt by association” unless the interaction is intentional and involves gang-related activity,
- ✓ Define “regularly observed” as requiring 3 observations in a twelve-month period,
- ✓ Require substantial and specific documentation,
- ✓ Reduce the subjectivity of the data by providing specific instructions and examples to personnel collecting and documenting the data,
- ✓ Eliminate labeling youngsters who may mimic gang behavior or appearance by defining a “gang member” as an individual who is 14 years of age or older and meets at least three criteria, and,
- ✓ Require that many of the criteria be confirmed by an officer or investigator with adequate training and experience.

## **ATTACHMENT - PROPOSED 9-POINT GANG CRITERIA**

### **Definition of a Gang:**

Minnesota Statutes § 609.229 defines a "criminal gang" as 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 Minnesota Statutes § 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.

### **Criminal Gang Identification Criteria:**

The gang affiliation of an individual is assessed based on involvement in criminal activity and documentation of any of these nine indicators. A single fact may not be used to satisfy multiple criteria. A "gang member" is an individual who is 14 years of age or older and meets at least three of the nine criteria listed below. A "confirmed gang member" is a gang member who has been adjudicated or convicted of a crime of violence as defined in Minnesota Statutes § 624.712, subdivision 5.

#### **#1 Admits Gang Membership**

- Admission must be documented with date of admission and name of officer or investigator who heard the admission in a police report, corrections report, field contact memo, or recorded statement.
- A vague admission about membership, for example, "I hang with the \*\* (gang name) \*\*," should be clarified, and the precise admission documented.

#### **#2 Arrested with a Gang Member**

- Individual is arrested with a gang member for an offense consistent with gang-related criminal activity.
- Arrests must be documented in a police report, corrections report or field contact memo and include the date, time, and location of the arrest.

#### **#3 Displays a Gang Tattoo or Brand**

- Tattoos and brands must be photographed or described in detail, using factual, non-subjective language. For example: "6-Pointed Star obtained 6 months ago" is a good description; "\*\*\* (gang name) \*\* Star" is not.
- To be considered a "gang tattoo" or "gang brand," the gang-related nature of the tattoo or brand must be confirmed by an officer or investigator with adequate training and experience.

#### **#4 Wears Clothing or Symbols Intended to Identify with a Gang**

- Suspected gang symbols and clothing worn or possessed must be evaluated in the context of how they are worn or the location they are recovered.
- Clothing, jewelry or items with suspected gang symbols or gang-related monikers should be photographed and, if possible, property inventoried.

- When items cannot be photographed or inventoried, the gang-related items should be described in detail using factual, non-subjective language. For example: “Blue jersey with # 13 on back” is a good description; “\*\* (gang name) \*\* jersey” is not.
- Many symbols have multiple meanings and may not be a gang symbol to everyone. The gang-related nature of the clothing or symbols must be confirmed by an officer or investigator with adequate training and experience.

**#5 Appears in a Photograph or Image with a Gang Member Engaging in Gang-Related Activity or Displaying Gang Signs or Symbols**

- Photographs or images should depict evidence of gang-related criminal activity, such as a person holding a gun or wearing or displaying gang-related signs, symbols, clothing or graffiti.
- A single photograph or image with a gang member, absent any depiction of criminal gang-related activity or displaying gang-related signs, symbols, clothing or graffiti, may count only as one of three documented occasions of association in the previous 12-month period under criterion #8.
- Photographs or images recovered from or depicting gang members obtained by consent or during a lawful search should be inventoried or otherwise preserved and the chain of custody maintained.
- Images from social networking sites or other online sources should be downloaded and identified with the name of the person who posted it (if known), the date of posting (if known) and the URL of the site.
- The gang-related nature of the clothing or symbols must be confirmed by an officer or investigator with adequate training and experience.

**#6 Name Appears On a Gang Roster**

- Gang rosters on any media, including on clothing or in graffiti, should be photographed, and, if possible, property inventoried.
- There must be sufficient documented information matching the name with a specific individual before this may be counted as a criterion.
- Graffiti containing threats against an individual should be photographed or described in detail.
- A list of suspected gang members generated by a law enforcement agency is NOT a gang roster.

**#7 Identified as a Gang Member by a Reliable Source**

- Is identified as a gang member by a person with sufficient knowledge of gang activity to qualify him/her as a reliable source.
- Reliable sources must have a demonstrable basis for their knowledge; rumor and speculation are insufficient. Reliable sources may include persons of authority or those with a personal connection to the individual. Examples include:
  - Police Officers
  - Corrections Officers
  - Teachers
  - Family Members
  - Other Gang Members
  - Informants

- Reliable source information must be documented in a police report, corrections report or field contact memo. A reliable source may be called upon to testify about his/her knowledge of an individual's gang involvement.

#### **#8 Is Regularly Observed or Communicates with a Gang Member in Furtherance or Support of Gang-Related Activity**

- Family interactions are not considered to be gang-related unless there is criminal activity involved.
- Interactions must be voluntary and related to gang activity. For example, a person associating with a gang member because both work at the same location, absent gang-related activity between the two, does not meet this criterion.
- Observations must be documented in a police report, corrections report or field contact memo and include the date, time, and location of the interactions.
- A minimum of three documented observations of gang-related interaction in the previous 12-month period is needed to meet the "regularly observed with" portion of this criterion.
- Correspondence or other communication between gang members, especially to and from incarcerated individuals, frequently contains references to other gang members and criminal and gang-related activity. They should be documented and, if possible, property inventoried.
- Messages and/or online conversations about criminal or gang-related activity on social networking sites should be downloaded or otherwise electronically preserved.

#### **#9 Produces Gang-Specific Writing or Graffiti in Furtherance or Support of Gang-Related Activity**

- Graffiti should be described in detail using factual, non-subjective language. Example: "132 SGC painted on wall" is a good description; "\*\*\* (gang name) \*\* graffiti painted on wall" is not.
- Graffiti and gang-specific writings found on walls, notebooks or other items should be photographed or described in detail in a police report, corrections report or other documentation and, if possible, property inventoried.
- The gang-related nature of the writings or graffiti must be confirmed by an officer or investigator with adequate training and experience.

**\*\*\*Important: Individual criteria must be established according to the definitions and instructions contained in the bullet points following the listed criteria.\*\*\***