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H 01/29/2009 Referred to Committee

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S 03/25/2009 Resolution Introduced to Approve 623

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**STATE LAW ENFORCEMENT DIVISION**

CHAPTER 73

Statutory Authority: 1976 Code Section 16-8-330

73-500 through 73-560. Statewide Criminal Gang Database

**Synopsis:**

South Carolina Act No. 82, passed by the General Assembly in 2007, and codified in Section 16-8-330 of the South Carolina 1976 Code of Laws, requires SLED to develop and manage a Statewide Criminal Gang Database to facilitate the exchange of information between federal, state, county, and municipal law enforcement agencies, and to promulgate regulations regarding this database. The South Carolina Law Enforcement Division (SLED) proposes the regulation contained in this document, entitled “73-500 through 73-560. Statewide Criminal Gang Database”, as compliance with the above-noted statute. This proposed regulation was published in the State Register on April 25, 2008, and there were no requests received for a hearing by the Administrative Law Court. As noted in the “Instructions” section below, minor technical changes have been made to the originally proposed language.

**Instructions:** The following sections of this proposed Regulation were modified as noted below:

Section 73-510 – Current NCIC policies require that this system run on SLED computer networks and connections rather than NCIC networks and connections.

Section 73-520 – Current NCIC policies require that this system run on SLED computer networks and connections rather than NCIC networks and connections.

Section 73-530 – Current NCIC policies require that this system run on SLED computer networks and connections rather than NCIC networks and connections.

Section 73-540 – During initial drafting of this regulation, subsection (E) of SC Code Section 16-8-330 was inadvertently omitted from this section of the regulation.

Section 73-550 – Technical changes were made to comply with current FBI Violent Gang and Terrorist Organization File (VGTOF) entry criteria.

Section 73-560 – Current NCIC policies require that this system run on SLED computer networks and connections rather than NCIC networks and connections.

All other items and sections remain unchanged.

**Text:**

* 1. Background and Scope

 1. Pursuant to meeting the intent and purpose of the Criminal Gang Prevention Act of 2007 (A82, R109, S141), SLED must develop and manage a statewide criminal gang database to facilitate the exchange of information between federal, state, county, and municipal law enforcement agencies pursuant to the intent and purpose of this article.

 2. As specified in SC Code Section 16-8-330, all state, county, and municipal law enforcement agencies must furnish information they acquire relating to criminal gangs and gang-related incidents to SLED to be included in the database.

* 1. SLED Responsibilities
1. Maintain the Statewide Criminal Gang Database (SCGD);
2. Ensure that use of the SCGD is only by bona fide law enforcement agencies and officials;

 3. Receive recommendations from Chiefs and Sheriffs regarding individuals selected for data entry to the SCGD;

 4. Provide extensive training to qualified individuals regarding database entry requirements and other applicable requirements specified in regulation and statute;

 5. Provide access codes to those individuals who complete SLED SCGD training;

 6. Monitor entries to and inquiries of the database;

 7. Review applications for access and execute Memoranda of Understanding (MOU) with participating agencies;

 8. Determine, as specified in state statutes, if information relating to criminal gangs, gang-related incidents, patterns of gang activity, or members or associates of criminal gangs received from federal law enforcement agencies and law enforcement agencies of other states is eligible to be included in the SCGD;

 9. Verify through SLED Criminal Justice Information Services (CJIS) Site Security Surveys that participating agencies have provided adequate physical security and have security Standard Operating Procedures which meet the criteria of this regulation;

 10. Audit participating agencies to verify that quality assurance procedures are in place to meet SLED requirements, and that compliance is maintained;

 11. Terminate access for non-compliance;

 12. Ensure applicable Federal Regulations regarding misuse are followed and civil penalties imposed when applicable; and

 13. Review and purge files per applicable Federal Regulations, including 28CFR Part 23.

* 1. Participating Law Enforcement Agency Responsibilities
1. Ensure that employees granted access to SCGD have been trained as specified by SLED regarding implementation of the requirements of this regulation;
2. Provide physical security for SCGD terminals in accordance with SLED requirements;
3. Maintain data received from the SCGD in accordance with SLED requirements and 28 CFR Part 23;
4. Ensure that data submitted to SCGD has been collected in accordance with Code Sections 16-8-210 et seq. (specifically, Sections 16-8-230, -320 and -330) and that data not collected in accordance with those statutes is not submitted to the SCGD;
5. Ensure that adequate quality assurance procedures are in place to comply with SLED requirements, 28 CFR Part 23, this regulation, and any other applicable regulations or statutes.
	1. Criteria for Access to the Statewide Criminal Gang Database
	2. SLED will execute SCGD MOUs with participating agencies.
	3. Participating agencies will provide a computer, connectivity, and qualified operators to access the secure SLED SCGD.
	4. Participating agencies will enter and maintain SCGD data in accordance with this regulation.
	5. Criteria for Entry of Information to the Statewide Criminal Gang Database
		* 1. Information submitted to the database must comply with SC Code Section 16-8-230 subsections (2) through (5).
			2. Information submitted to the SCGD must be from sources deemed reliable in accordance with generally accepted law enforcement criteria.
			3. Individuals entered into the SCGD based on association with other known criminal gang members must be consistent with the Federal Bureau of Investigation’s Violent Gang and Terrorist Organization File (VGTOF) criteria as defined in SC Code Section 16-8-330 (D) and (E).
	6. Criteria for Designation as an Active Member of a Criminal Gang
		* + 1. An individual admits, at the time of arrest or incarceration, to being a member of a criminal gang; or,

2. An individual meets any two of the following criteria:

3. An individual is identified as a criminal gang member by a documented reliable informant;

4. An individual resides in or frequents a particular criminal gang’s or group’s area, and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal gang or criminal group members;

5. An individual is identified as a criminal gang member as corroborated by independent information;

6. An individual has been arrested more than once in the company of identified criminal gang members for offenses which are consistent with usual criminal gang activity, or criminal group activity for which the criminal group is associated with; or

 7. An individual admits, at a time other than arrest or incarceration, to being a member of a criminal gang.

* 1. Penalties for Misuse of the Statewide Criminal Gang Database

Misuse of the SCGD will subject the offender to SLED decertification.

Misuse of the SCGD may possibly subject the offender to a Federal Civil Fine of up to $10,000 as specified in Federal Regulation 28CFR Part 23.

**Fiscal Impact Statement:**

No additional state funding is requested. A prior review of the Criminal Gang Prevention Act by SLED indicated a need for one (1.00) new position and support costs to train and maintain the Violent Gang and Terrorists Organization File and also manage the Statewide Criminal Gang Database. This represented a recurring cost to the General Fund of the State of approximately $50,399. There was also a one-time cost of $3,400 for furniture and office equipment for the new position. These funds were provided to SLED in the FY2007-08 Appropriation Bill.

Further review indicated the need for approximately $395,500 to construct the Statewide Criminal Gang Database. Funding for this project was provided in 2007 by grant funds received from the United States Department of Homeland Security.

**Statement of Rationale:**

This regulation is promulgated in response to the requirements set forth by Act 82 passed by the S.C. General Assembly in 2007. It requires SLED to develop and manage a statewide criminal gang database to facilitate the exchange of information between municipal, county, state, and federal law enforcement agencies, and to promulgate regulations regarding this database.