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DOI'S OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD ISSUES REPORT EXAMINING NYPD'S USE AND OPERATION OF THE CRIMINAL GROUP DATABASE

Today, the Department of Investigation's ("DOI") Office of the Inspector General for the New York City Police Department ("OIG-NYPD") issued a report examining the New York City Police Department's ("NYPD") use of the Criminal Group Database ("CGD"). The database, which has been operational since 2013 and currently contains approximately 16,000 entries, has been characterized by NYPD as a database of intelligence regarding criminal groups and street gangs, which allows NYPD to discern trends, relationships and patterns to enhance public safety and criminal investigations. According to NYPD's published Impact and Use Policy ("IUP"), the CGD functions as a component of NYPD's internal case management system and includes criminal group names, associated incidents, geographic data, inter-criminal group dynamics and relationships, and alleged group membership. This Report details (1) the type of information included in the database, (2) the entry criteria and the Department's processes to add, remove, or maintain individuals in the database, (3) the purposes for which it is used by NYPD, (4) longstanding public concerns about the consequences of inclusion in the database, (5) findings resulting from an analysis of a sample review of almost 500 individuals included in the database and the Department's supporting documentation, and (6) recommendations for necessary improvements. A copy of the Report is attached to this release and can be found at the following link: https://www.nyc.gov/site/doi/newsroom/public-reports.page .

DOI Commissioner Jocelyn E. Strauber said, "This Report is the result of a rigorous examination of NYPD's Criminal Group Database, initially prompted by public concerns about its use. We provide essential facts as to NYPD's use and operation of the database, explore the concerns of community and advocacy groups, and propose some fundamental reforms including with respect to how individuals are added to, and maintained in, the database, as well as the handling of minors who are included. The proposed recommendations are data- and research-driven, representing critical areas of change that NYPD should implement."

Acting Inspector General Jeanene Barrett said, "DOI's OIG-NYPD thoroughly analyzed many of the key issues concerning the Criminal Group Database, including public transparency, guidance on entry criteria, and public concerns about the use of the database. Among the findings of the investigation were a lack of formal, written policies governing the database, particularly with respect to the application of the criteria for adding and maintaining individuals in the database; delays in the review of entries; and limited transparency to the public. The 17 recommendations we have made will strengthen the policies and practices around the use and operation of the database."

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The Report outlines the work undertaken by OIG-NYPD, including an in-depth analysis of approximately 1,200 supporting documents related to almost 500 individual entries in the CGD, and extensive interviews with legal experts, members of police oversight agencies, community and advocacy groups, and representatives of NYPD. OIG-NYPD also engaged with representatives from local and regional prosecutors' offices about their use of the CGD and its value in criminal investigations, and reviewed publicly available gang database policies from over three dozen of the largest police departments in the United States.

This Report provides detailed information about the operation of the CGD, including the criteria that are used by NYPD to add individuals to the database, the documents that support their inclusion, how CGD data is accessed, and the processes by which individuals are evaluated for removal or continued inclusion. In addition, the Report highlights changes in NYPD's practices with respect to the database since 2018, and, importantly, recommends additional reforms to address issues identified by OIG-NYPD.

This investigation did not identify a relationship between inclusion in the CGD and any individual adverse outcomes. This may be, in part, because gang affiliation information exists in other forms and systems across NYPD, and therefore any harm that may arise is not attributable directly, or solely, to CGD. Furthermore, harm may not be readily determined, since NYPD has historically not notified individuals in the database of their inclusion. However, OIG-NYPD found, largely based on discussions with advocacy groups, that there is uncertainty and fear about CGD inclusion and its consequences in certain communities in New York City, and that this fear decreases public confidence in NYPD and strains community-police relations.

Other findings highlighted in the Report include: NYPD does not provide sufficient guidance for entry criteria use; in some cases, NYPD is not strictly following its own procedural requirements for the inclusion of individuals in the CGD and is not creating and maintaining sufficient documentation to support inclusion; NYPD's design and use of the CGD is similar to that of other major jurisdictions in many respects; NYPD does not inform minors or their parents of minors' inclusion in the CGD, and NYPD does not have an appeals process for minors, while certain jurisdictions do provide notification and an appeal right to minors; officers were found to lack guidance regarding the basis for entry renewals and at times did not create and maintain sufficient documentation to support renewal; and many of the key policies and practices relating to the CGD are not memorialized in writing.

The Report makes 17 recommendations that are categorized under "Increased Public Awareness About the CGD," "Activation, Renewal & Deactivation," "Minors," "Sealed Arrests," "Staffing," "Freedom of Information Law Requests for Information Related to the CGD," and "Ongoing OIG-NYPD Auditing of the CGD." Those recommendations include:

- Within 180 days, NYPD should revise the IUP for the CGD to describe the inclusion, renewal and removal processes; explain the nature and extent of the evidence required to satisfy the entry criteria; and identify by name the law enforcement and other external entities with whom NYPD may share information about the individuals included in the CGD for investigative or other purposes.

- NYPD should require a multilevel review process for the inclusion, renewal and removal of all entries in the CGD, to be supported by the signature of each reviewer where required.

- NYPD should provide written guidance for officers with respect to various aspects of the CGD inclusion, review and renewal process, including the application of the entry criteria, the bases for renewal, and the completion of the forms documenting the basis for CGD inclusion and renewal.

- Within 180 days, NYPD should begin a review of each entry in the CGD to determine whether inclusion is still warranted. NYPD should require, by written policy, the review of all CGD entries every 12 months for minors and every 18 months for adults.

- NYPD should notify parents or guardians of minors that their children have been included in the CGD, within 60 days of inclusion, unless notification would interfere with active criminal investigations.

- NYPD should create a process for minors and their parents to appeal their inclusion in the database if the minors have no contact with law enforcement over a 12-month period.

- NYPD should isolate all sealed arrests from other CGD data and withhold sealed arrest data from all CGD users, except where retrieval has been explicitly authorized by law.

The Gang Database Report was prepared by Assistant Inspector General Adrian Amador, Data Analyst Noah Truesdale, Investigative Attorney Julie Marling, Confidential Investigator Shivana Subir, Confidential Investigator Lasse De Graaf, and Executive Assistant Roshan Marksman, under the guidance of Acting Inspector General Jeanene Barrett of DOI's Office of the Inspector General for the NYPD, under the supervision of Deputy Commissioner/ Chief of Investigation Dominick Zarrella and First Deputy Commissioner Daniel G. Cort. Special thanks are given to the former OIG-NYPD team members who contributed to the advancement of the investigation.

New York City
Department of Investigation

Office of the Inspector General for the NYPD (OIG-NYPD)

An Investigation into NYPD's Criminal Group Database

Jocelyn Strauber
Commissioner

Jeanene Barrett
Acting Inspector General for the NYPD

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Acronyms

Acronym	Term
ACLU	American Civil Liberties Union
BPD	Boston Police Department
CEIS	Criminal Enterprise Information System
CGD	Criminal Group Database
CM	Community Member
CPD	Chicago Police Department
DAS	Domain Awareness System
DD5	Document Detective File
DOI	New York City Department of Investigation
ECMS	Enterprise Case Management System
FIO	Field Intelligence Officer
FOIA	Freedom of Information Act
FOIL	Freedom of Information Law
G.A.N.G.S. Coalition	Grassroots Advocates for Neighborhoods Groups & Solutions
GAS	Gang Analysis Section
I-CARD	Investigation Card
ICE	Immigration and Customs Enforcement
IUP	Impact and Use Policy
NYCHA	New York City Housing Authority
NYPD	New York City Police Department
OIG-NYPD	Office of the Inspector General for the NYPD
RAO	Records Access Officer
S.M.A.R.T.	Social Media Analysis & Research Team

I. Executive Summary

Law enforcement's creation and use of gang databases—that is, collections of information about individuals and their alleged associations with criminal groups—has generated intense public concern and media coverage across the country.[1] In 2017, public reports by advocacy groups and the media revealed that the New York City Police Department (NYPD or the Department) was using, for law enforcement purposes, an electronic repository of information known as the Criminal Group Database (CGD).[2] Advocacy groups raised various questions and concerns about the CGD, including how individuals were added to it, the implications of inclusion, and the possible avenues for removal.

In October 2018, in response to those general public concerns as well as complaints from members of the public and elected officials, the Office of the Inspector General for the NYPD (OIG-NYPD or the Office), a unit of the Department of Investigation (DOI), launched an investigation into NYPD's creation and use of the CGD. The objectives of the review were to understand how NYPD used the database, its value in crime control and prevention activities, the potential harms of inclusion, and the risks and costs of maintaining the database. This Report memorializes the findings obtained from that investigation, which included numerous interviews with community and advocacy groups, various NYPD personnel and legal and subject matter experts. The investigation also involved, among other steps, analyses of entries in the CGD as well as the supporting documentation for those entries, and a review of the policies and practices of more than three dozen jurisdictions with respect to their use of gang databases.

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* DOI Commissioner Jocelyn Strauber and Acting Inspector General Jeanene Barrett thank current and former staff of OIG-NYPD for their efforts in producing this Report, specifically, Adrian Amador, Assistant Inspector General, Noah Truesdale, Data Analyst, Lasse de Graaf, Confidential Investigator II, Shivana Subir, Confidential Investigator II, McKenzie Dean, Senior Policy Analyst and Roshan Marksman, Executive Assistant. We also thank the New York City Police Department and representatives of other organizations for their assistance and cooperation during this investigation.

[1] *See, e.g.*, Zolan Kanno-Youngs & Gerald Porter Jr., *Gang Databases are the Latest Controversial Policing Tool*, THE WALL ST. J. (Jul. 26, 2018, 12:51 PM), https://www.wsj.com/articles/gang-databases-are-the-latest-controversial-policing-tool-1532597400.

[2] *See, e.g.*, Noah Hurowitz, *Secret Gang Database Filled with 'Garbage,' Advocates Say*, DNA INFO (Oct. 19, 2017, 11:34 AM), https://www.dnainfo.com/new-york/20171019/civic-center/nypd-gang-database-legal-aid-brooklyn-defenders-foil-request/; Jake Offenhartz, *The NYPD's Expanding Gang Database is Latest Form of Stop & Frisk, Advocates Say*, GOTHAMIST (June 13, 2018), https://gothamist.com/news/the-nypds-expanding-gang-database-is-latest-form-of-stop-frisk-advocates-say.

As of December 2022, there were 16,141 individuals included in the CGD. The process for inclusion begins with a nomination from NYPD personnel—Field Intelligence Officers (FIOs) or investigators assigned to either the Detective Bureau's Gang Squad or the Social Media Analysis and Research Team (S.M.A.R.T.). Nominations generally are documented on two forms. One form preserves relevant law enforcement information related to the individual (Person Maintenance DD5); while the other form must be completed to affect the individual's inclusion in the database, a process called "activation" (Activation DD5).[3] There are two distinct sets of criteria for inclusion; entry into the CGD can be based on either set. Those sets of criteria are referred to as Option A and Option B. Option A has two bases for entry; one must be satisfied for activation into the database. Option B has six criteria; two must be satisfied for activation.[4]

Option A requires EITHER 1) self-admission by an individual of criminal group membership, made to a NYPD officer or via a post on the individual's own social media account indicating membership, such as photographs, colors, language, or symbols that are frequently used by criminal groups; OR 2) a reasonable belief, based on an investigation, that the individual is in a criminal group, and a determination by two independent sources that the individual is in a criminal group.

Option B requires two of the following: 1) frequent presence at a known criminal group location; 2) possession of criminal group-related documents; 3) association with known criminal group members; 4) social media posts with known criminal group members while possessing known criminal group paraphernalia; 5) scars and tattoos associated with a particular criminal group; or 6) frequent wearing of the colors and the use of hand signs that are associated with a particular criminal group.[5]

OIG-NYPD's investigation determined that, since the introduction of the CGD in 2013, NYPD has made changes to how individuals are activated into the database, as

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[3]The term "activate," a process outlined in greater detail later in the Report, is defined as the official entry of an individual into the database following a formal nomination by specified NYPD personnel. The term "deactivate," discussed further herein, is effectively the removal of the individual from the CGD, meaning that when the database is queried that individual's name will not appear (although as a technical matter, the individual's name is not deleted from the database itself). Once an individual has been deactivated, the original nomination and activation requirements must be satisfied for the individual to be "reactivated" into the database.

[4]The acronym "DD5" refers to a broad category of forms that document NYPD officers' interactions with the public. Those DD5s most relevant to the CGD include the Activation, Person Maintenance, and Renewal forms, for redacted versions of those forms see Appendix A.

[5] N.Y.C. POLICE DEP'T, CRIMINAL GROUP DATABASE: IMPACT AND USE POLICY (Apr. 11, 2021), https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/post-final/criminal-group-database-nypd-Impact-and-use-policy_4.9.21_final.pdf (describing, at the general level, criteria for inclusion in the Criminal Group Database).

well as how they are reviewed and/or removed from the database, (termed "deactivation"), as a result of factors including public concerns about the CGD's continued use. Then-Chief of Detectives Dermot Shea publicly discussed those changes in his 2018 City Council testimony; the Department's written Impact and Use Policy (IUP) regarding the CGD technology, issued in April 2021, also addresses those changes; see Appendix B for the full text of the IUP.

OIG-NYPD's investigation determined that:

1. **Evidence of harm from the CGD was not found.**

Although members of the public, including via means like advocacy organizations, have expressed concerns about the potential harms associated with inclusion in the CGD, the Office was not able to find evidence that inclusion in the database has caused harm to any individual or group of individuals. That may be because inclusion in the CGD does not, in fact, cause harm. It may be, in part, because gang affiliation information exists in other forms and systems across NYPD, not only in the database, thus any harm that may arise from being labeled gang-affiliated by the Department is not attributable directly, or solely, to the CGD. Additionally, harm may not be readily determined, since the Department has historically not notified individuals in the database of their inclusion; were that information known to those individuals they might be able to more readily assess whether inclusion has caused harm and potentially raise concerns about their presence in the database.

The investigation did not identify a relationship between inclusion in the CGD and any individual adverse outcomes. However, OIG-NYPD found, largely based on discussions with advocacy groups, that there is fear and uncertainty in certain communities in New York City about CGD inclusion and its consequences, and that fear decreases confidence in the Department and strains police-community relations.

2. **Historically, members of the public generally have been unable to determine whether or not they are included in the CGD.**

NYPD routinely denied Freedom of Information Law (FOIL) requests, as well as administrative appeals of those denials, made by members of the public. The Department disclosed CGD-related information only in response to Article 78 litigation brought by individuals seeking information about their CGD status, following NYPD's denials of FOIL requests and administrative appeals. The Department told OIG-NYPD that in the late fall of 2022 it modified its approach to FOIL requests seeking such information, and that the change will

likely result in more extensive disclosure of CGD-related information. However, the new approach is not codified in formal Department policy and disclosure remains largely within NYPD's discretion. That new approach was adopted in part to avoid further unnecessary Article 78 litigation and in light of the outcomes in, and in particular disclosures made in, those proceedings. If NYPD adheres to that new approach, future FOIL requests are likely to yield information about whether or not an individual is in the CGD.

3. The CGD IUP does not provide sufficient detail about the activation process, data sharing with third parties or the CGD's role in NYPD's anti-crime efforts.

The IUP does not identify by name the outside agencies that may be granted access to CGD information. The POST Act, which governs NYPD's disclosures in this area, does not require that the Department name those agencies, but it is OIG-NYPD's position that NYPD should release such information to address public concerns about this issue, consistent with the spirit of the POST Act. In addition, the IUP provides limited details about how individuals are added to the database; it does not explain the basis for the entry criteria or how individuals are evaluated against those criteria. Finally, the IUP does not specify how the database enhances NYPD's public safety and anti-crime efforts.

4. The CGD's gang affiliation information is widely available throughout NYPD.

Only a single small unit in the Detective Bureau's Special Investigations Division is authorized to deactivate and activate individuals into the CGD, and has access to the entirety of the detailed information contained therein. Approximately 10,000 of NYPD's estimated 33,000 uniformed officers are able to view the information contained in the activation, renewal, or deactivation DD5s for each individual included in the CGD, which are accessible via the Enterprise Case Management System (ECMS). All uniformed members of service have access to the Domain Awareness System (DAS), an investigative search function within ECMS. Those officers can search an individual, by name, via DAS, and the search function will generate information from a number of sources, including the CGD. DAS search results for a specific individual will identify the name of the criminal group (if any) with which the individual is allegedly affiliated.

5. **Option A allows an individual to be added to the gang database on the basis of more limited evidence than Option B.**

When activation is based on social media, Option A allows entries to be added to the database on the basis of more limited evidence of gang affiliation than Option B. This is because Option A, part 1, allows activation based on a post on an individual's own social media account that qualifies as "self-admission" of affiliation. Self-admission, in turn, has been based on any one of the following: an individual's use of language, symbols, pictures, or colors associated with a criminal group, posted on their own social media account. Option B, on the other hand, requires at least two indicia of gang affiliation.

6. **NYPD does not provide sufficient guidance for entry criteria use.**

NYPD does not provide guidance to officers responsible for nominating and activating individuals as to the amount or nature of evidence required to establish that the criteria for activation are met.

7. **In at least some cases, NYPD may not be strictly following its own procedural requirements for the nomination and activation of individuals into the CGD.**

Until relatively recently (the exact dates are unclear), NYPD required four levels of approval to include an individual in the CGD. A reporting officer's proposal to include an individual was reviewed by their supervisor (Level 1), a more senior supervisor, termed an "endorser" (Level 2), the detective responsible for activating individuals into the CGD (Level 3), and that detective's supervisor (Level 4). Based on OIG-NYPD's analysis of a sample of 494 CGD entries for the 2018-2022 period (discussed in detail herein), NYPD followed that review process for the majority of the entries in the sample. However, in approximately 10% of the entries, for both adults and minors, OIG-NYPD found that NYPD's documentation reflected that the same individuals served in multiple roles throughout the nomination process. That is, in some instances, a single individual served as the reporting officer, reviewing supervisor, and endorser, or as both the reviewing supervisor and endorser.

8. **NYPD requires review of CGD entries, but lacks an enforcement mechanism to ensure that all entries are reviewed within the specified time period.**

NYPD policy, as outlined in the IUP for the CGD, requires the assessment of database entries every three years for those older than 18 and every two years

for those younger than 18. The entries are flagged for review via an automated process, but there is no mechanism that ensures that the reviews are actually conducted on schedule by NYPD staff. Of the sample of 494 individuals activated into the database from 2018 through late 2022 that OIG-NYPD evaluated, 179 (36.2%) should have been reviewed per NYPD policy by the time of the evaluation, but had not been. Of those 179 entries, 141 were adults and 38 were minors. For the individuals whose reviews were completed, evidenced by the preparation of review forms (211 of the 494 sample), the evaluations for 193 individuals did not occur on a timely basis, inconsistent with NYPD's requirements. Only 18 of the 211 were evaluated by the required deadlines. The average delay for the review of entries in the sample was 69.1 days, 28.9 days for adults and 188.9 for minors.

9. NYPD's design and use of the CGD is similar to that of other major jurisdictions.

Other law enforcement entities nationwide employ gang databases, and their inclusion criteria and applicable policies and procedures for the use of their databases are similar to NYPD's. Gang databases in those jurisdictions have been subject to legal challenges, but no court has found the databases to be unlawful to date.[6]

10. In certain jurisdictions, parents are notified of minor children's inclusion in databases and have a right to appeal.

In certain jurisdictions, parents are notified when their minor children are added to a gang database, and have the right to appeal their inclusion. OIG-NYPD examined the gang database policies and practices from departments across the United States and found that two jurisdictions and many of the cities in the state of California inform parents and juveniles if the juvenile is added to a gang database, and provide a right to appeal. (Details of that

[6]For example, the ACLU of Massachusetts brought a suit against the Boston Police Department for its alleged lack of compliance with a Massachusetts Public Records Law request related to Boston's gang database (Complaint For Declaratory and Injunctive Relief and Action in the Nature of Certiorari, *ACLUM, et al. v. City of Boston, et al.*, No. 1884CV03561-E [Suffolk Super. Ct. Jan. 4, 2019], https://www.aclum.org/sites/default/files/field_documents/august_2020_-_complaint_boston.pdf) and a youth advocacy group in Rhode Island brought a challenge to Providence, Rhode Island's gang database, resulting in a Consent Order reforming the gang database (Consent Agreement, *Providence Youth Student Movement v. Elorza et al.*, No.1:19-cv-00378 [D.R.I. Mar. 10, 2020], https://upriseri.com/wp-content/uploads/2019/07/PrYSM-Complaint.pdf). In addition, issues related to the accuracy of gang databases have arisen in the context of immigration cases (see, *e.g.*, *Ortiz v Garland*, 23 F.4th 1 (1st Cir. 2022)); *Pedrote-Salinas v. Johnson*, No. 17 C 5093, 2018 U.S. Dist. LEXIS 85912 (N.D. Ill. May 22, 2018).

analysis are in Appendix D of the Report). Certain state statutes recognize the unique status of juveniles in the criminal justice system, like the California Penal Code, which requires that individuals be 13 years of age or older to be included in the CalGang database. Further, the California Penal Code requires that notifications be delivered to minors and at least one parent or guardian before they are activated into the CalGang Database.[7] The minor and their parent/guardian must be given evidence supporting the minor's inclusion in the database as part of the notification process, and inclusion can be appealed immediately thereafter. The law enforcement agency must make a decision within 60 days after an appeal is filed, after considering information provided by the minor and their parent, guardian, or legal counsel outlining why inclusion is not appropriate.[8] NYPD, however, does not inform minors or their parents of their activations into the CGD, and does not have an appeals process. The Department has in recent years committed to addressing crime prevention at the community level, specifically the reduction of juvenile involvement in criminal groups, and previously considered (according to NYPD personnel) the creation of a parental notification process for minors within the CGD.

11. **Officers were found to lack guidance regarding the bases for entry renewals and some types of renewal documentation were insufficiently supported.**

NYPD policy permits certain kinds of police contact to be a basis for continued inclusion (or "renewal") in the database following a review. The investigation revealed several flaws in this process. First, NYPD policy does not provide written guidance as to the forms of police contact that are a sufficient basis for renewal. Second, the documentation supporting renewal for reasons other than police contact was found to be insufficient. Finally, OIG-NYPD identified a number of examples of minors who were renewed without qualifying police contact, because their entries were less than three years old. That finding was inconsistent with NYPD's requirement that the status of all minors in the database be reviewed at two-year intervals after inclusion.

12. **There are costs to the maintenance and use of the CGD.**

The database, which is comprised of thousands of entries, requires regular review and updating, a substantial commitment of NYPD resources.

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[7] *See generally* CAL. CODE REGS. tit. 11, § 750 (2023); CAL. PENAL CODE § 186.20–186.36 (Deering 2023).

[8] CAL. STATE AUDITOR, REP. 2015-30, THE CALGANG CRIMINAL INTELLIGENCE SYSTEM (2016), https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf.

13. **Many key policies and practices relating to the CGD are not memorialized in writing.**

NYPD does not appear to have memorialized in written policies and procedures significant aspects of its practices with respect to the CGD. For example, there is no written guidance with respect to the level of detail and documentation required to establish that an individual meets the entry criteria, or how officers should evaluate, at the review period, whether an individual should remain in the database. The absence of such guidance likely contributed to the examples of insufficient documentation to support inclusion and renewal that OIG-NYPD observed. Clear, written policies will ensure that NYPD follows consistent practices with respect to the CGD, and that determinations concerning inclusion and renewal are supported, documented, and reviewable.

14. **Some individuals were renewed in the CGD on the basis of recent arrests that appear to be sealed.**

New York State law has long prohibited law enforcement use of sealed records, for any purpose, with certain narrow exceptions that do not apply here. Nonetheless, some individuals were renewed in the database based on recent arrests that appear to be sealed.

Based on those and other findings, OIG-NYPD makes the following recommendations:

Increased Public Awareness About the CGD

1. Within 180 days, NYPD should publish a statement on its website describing how the CGD contributes to the Department's public safety and violent crime reduction strategies. The statement should provide more detail than what is contained in the publicly available IUP and it should describe how the information in the database supports the Department's efforts to combat violent crime as well as its effectiveness as a tool of crime prevention.

2. Within 180 days, NYPD should revise the IUP for the CGD to describe the activation, renewal, and deactivation processes, explain the nature and extent of the evidence required to satisfy the entry criteria, and identify by name the law enforcement and other external entities with whom NYPD may share information about the individuals included in the CGD, for investigative or other purposes. The document should also describe the security protections

that prevent unauthorized parties, within or outside of NYPD, from accessing the CGD.

Activation, Renewal, & Deactivation

3. NYPD should require a multilevel review process for the activation, renewal, and deactivation of all entries in the CGD, to be supported by the signature of each reviewer where required. That process should be memorialized in writing.

4. NYPD should provide written guidance to officers explaining how to apply the Option A and B entry criteria, including examples of the type and extent of evidence that is sufficient for activation.

5. NYPD should provide written guidance for officers about how to complete the Person Maintenance, Activation, and Renewal DD5s for the maintenance and entry of individuals into the CGD, and should include a requirement that available documentation be attached to the DD5s to substantiate that entry criteria are satisfied.

6. NYPD should create a list of police encounters and arrest types that constitute "qualifying police contact," for purposes of renewal determinations, to be used by officers responsible for deciding whether to renew or deactivate individuals from the CGD.

7. Within 180 days, NYPD should begin a review of each entry in the CGD to determine whether inclusion is still warranted. That analysis should be completed by the Department within one year after the publication of this Report.

8. NYPD should require, by written policy, the review of all CGD entries every twelve months for minors and every eighteen months for adults.

9. NYPD should make inaccessible via DAS and other search methods all CGD entries that are not evaluated within 60 days of review deadlines, until those entries are reviewed.

Minors

10. NYPD should require and convene a special review panel of Department personnel to approve the activation of minors into the CGD, documented by the signature of the chair of the group.

11. NYPD should notify parents or guardians of minors that their children have been included in the CGD, within 60 days of inclusion, unless notification would interfere with active criminal investigations.

12. NYPD should create a process for minors and their parents to appeal their inclusions in the database if the minors have no contact with law enforcement over a twelve-month period.

Sealed Arrests

13. NYPD should ensure that officers completing Person Maintenance, Activation and Renewal forms do not have access to sealed arrest information for that purpose, including, but not limited to ensuring that these DD5 forms do not autofill with sealed arrest information, unless explicitly authorized by law.

14. NYPD should not consider sealed arrests when making CGD activation and renewal determinations.

Staffing

15. NYPD should increase the number of staffers assigned to support the administration of the CGD.

FOIL Requests for Information Related to the CGD

16. NYPD should create a written policy formalizing its intention, after an individualized assessment, to generally grant FOIL requests by individuals with respect to whether they are in the CGD, by providing them with redacted versions of any relevant supporting documents if they are in the database, and by informing them that there are no relevant documents, if they are not.

Ongoing OIG-NYPD Auditing of the CGD

17. Annually, as requested, NYPD should provide a random sample (including minors) of all Activation, Renewal and Deactivation DD5s and any supporting documentation to OIG-NYPD for review.

II. Introduction and Background

Gang databases are centralized collections of information about criminal organizations and their members and generally include, among other things, information about the unlawful activities of those groups, their relationships to each other as well as details about their members, such as names, nicknames/aliases, photographs, locations, and associations.[9] Law enforcement agencies maintain that those lists are critical to the effective prevention of violent street crimes, which are disproportionately committed by members of criminal groups.[10]

In 2017, advocacy groups and media outlets revealed that the New York City Police Department (NYPD or the Department) had created and was using such technology, designated the Criminal Group Database (CGD).[11] The CGD is a data repository that exists within NYPD's Enterprise Case Management System (ECMS), containing NYPD intelligence information about groups believed to be involved in criminal activity across the five boroughs, such as their membership, their impact on the communities where they are located, and their involvement in acts of violence.[12] All 33,763 uniformed members of service have access to gang affiliation information via the Domain Awareness System (DAS) search function (allowing officers to search by individual name) that is a facet of ECMS for investigative purposes.[13] A smaller pool of 10,000 officers are able to view the CGD for more in-depth details related to those included within it.[14] The database itself can be modified by a limited number of NYPD personnel including a single officer who is responsible for adding – activating – new

[9] Lauren M. Pittman, Constructing a Compromise: The Current State of Gang Database Legislation and How to Effectuate Nationwide Reform, 106 IOWA L. REV. 1513 (2021).
[10] *Id*.
[11] Offenhartz*, supra* note 2.
[12] The Enterprise Case Management System is the full collection of files and databases held by the NYPD. The CGD is one of the many databases contained within that system. The software is used to store and make available for investigative and other purposes data gathered by personnel through daily policing activities.
[13] *Data Transparency Initiative: Current NYPD Members of Service*, N.Y.C. CIVILIAN COMPLAINT REV. BD., https://www.nyc.gov/site/ccrb/policy/data-transparency-initiative-mos.page (data presented herein was derived in Apr. 2023).
[14] The Domain Awareness System (DAS) is a network of sensors, databases, software, devices and infrastructural elements that operates citywide and delivers analytics and tailored data to the officers both in the field and at their desks via devices such as smart phones and precinct desktops. N.Y.C. POLICE DEP'T, DOMAIN AWARENESS SYSTEM: IMPACT AND USE POLICY (2021), https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/post-final/domain-awareness-system-das-nypd-impact-and-use-policy_4.9.21_final.pdf; *see also* E.S. Levine et. al, *The New York City Police Department's Domain Awareness System*, 47(1) INTERFACES 70 (2017), https://pubsonline.informs.org/doi/10.1287/inte.2016.0860.

entries and reviewing those already in the system, and their supervisor, who reviews and approves their determinations.

The existence and use of the CGD has caused significant public concern. In particular, political leaders, advocates, and members of the public have sought information concerning: (1) the criteria for inclusion in and removal from the CGD, (2) the training and supervision of officers authorized to determine whether individuals should be included; (3) whether/how individuals can find out if they are in the database; (4) whether/how individuals can seek removal; (5) what due process, civil liberty, and/or privacy protections are in place to avoid the misclassification of individuals; and (6) how to prevent misuse of the data. In part because NYPD has not provided clear answers to those and other questions, public concerns about the database and public pressure to eliminate it have increased. The advocacy community has been particularly focused on the potential consequences of inclusion in the CGD, including possible violations of civil liberties.

A. The June 2018 City Council Hearing

In June 2018, during a City Council hearing, then-Chief of Detectives Dermot Shea stated that there were nearly 17,000 individuals in the CGD.[15] He testified that in 2014, the Department established procedures governing how individuals would be entered into the database and how they could be removed. At that time, NYPD had already reduced the number of individuals included in the CGD by approximately half—34,000 individuals were initially included.[16] Shea noted that among those who remained in the CGD, 90% had been arrested for at least one felony, 75% had been arrested for at least one index crime, and 50% had been arrested for at least one robbery.[17] The then-Chief of Detectives also testified that gang violence was associated with a large number of homicides in the City as well as the occurrence of 18,000 robberies and nearly 2,600 other felonies.[18]

Shea began by describing how "gangs," previously defined by rigid hierarchies and low numbers, struggled for control of illegal markets. He further explained that those gangs had fractured into many smaller groups known as "crews" that engaged in

[15] Oversight – NYPD's Gang Takedown Efforts: Hearing Before the Comm. on Pub. Safety, 2018 Leg., (N.Y.C. Council 2018).
[16] This information was obtained from interviews with NYPD and the examination of related documents, including the testimony provided by then-Chief of Detectives Dermot Shea in the summer of 2018. *Oversight – NYPD's Gang Takedown Efforts: Hearing Before the Comm. on Pub. Safety*, 2018 Leg., (N.Y.C. Council 2018).
[17] Statistics regarding the criminal activity associated with individuals affiliated with criminal groups were included in the June 2018 testimony. *Id.*
[18] *Id.*

violent conflict. According to Shea, in order to address that shift, NYPD expanded partnerships with other law enforcement agencies and introduced new technologies, including the CGD, to help surveil and track the sprawling associations within and across gangs. The then-Chief of Detectives also asserted that the use of innovative tactics and technologies was not a continuation of "Stop, Question, and Frisk" policies. Concluding his testimony by favorably comparing the CGD to other jurisdictions' gang databases, Shea highlighted the criminality of those individuals included in the database and the role played by the technology in the enforcement activities.

In the 2021 CGD Impact and Use Policy (IUP), discussed further below, the NYPD noted that the CGD includes criminal group names, associated incidents, geographic data, inter-criminal group dynamics and relationships, and alleged group membership. The IUP explained that the database allows the Department to discern trends, relationships and patterns with respect to criminal groups, to enhance public safety and criminal investigations. In recent interviews with the Office of the Inspector General for the NYPD (OIG-NYPD or the Office), the Department maintained its position that the database is central to its efforts to ensure public safety and the safety of its officers. The Department emphasized the importance of the CGD in its efforts to contain and prevent violence associated with gang activity city-wide and to prevent the emergence of incident-specific threats. For example, NYPD has explained that having gang affiliation information is useful in anticipating, preventing and mitigating violent crime that can be attributed to criminal groups, including inter-group violence and retaliatory violence.

NYPD also addressed the nature and uses of the CGD and the safeguards that were in place to prevent its misuse, characterizing the database as a critical tool in NYPD's precision policing approach.

During the 2018 hearing, community and advocacy groups testified to the following concerns related to the use of the gang database: (1) NYPD's gang policing was a continuation of the unconstitutional use of the Stop-Question-Frisk tactics; (2) NYPD had not been transparent about the criteria for entry into, review of, and removal from the CGD; (3) the CGD's population was disproportionately comprised of Black and Hispanic males and reflected racial bias in the selection of individuals for inclusion; and (4) the use of gang policing tactics and the CGD eroded the community's trust in NYPD.[19] Members of the public also expressed fear about the potential for data sharing between NYPD and school safety authorities; the impact of "gang" labelling on bail determinations, the time spent by defendants in pretrial detention, the terms of plea offers, and the length of sentences, as well as the

[19] *Id.*

consequences of "gang" labelling for immigrant New Yorkers, particularly those who are not U.S. citizens.[20]

NYPD has consistently maintained that the racial composition of the database reflects the patterns of gang membership in New York City, and is not a product of racial bias.[21]

B. NYPD's CGD Impact and Use Policy

In 2021, as required by the Public Oversight of Surveillance Technology (POST) Act, NYPD provided public information about the use of the CGD in an "Impact and Use Policy" (IUP).[22] The IUP included certain rules, processes, and guidelines relating to the use of the CGD, as well as general information about data retention, access, security, information sharing, internal auditing mechanisms, and disparate impacts of the policy on vulnerable populations.[23]

Prior to the posting of the IUP, advocacy groups expressed concerns that affiliation information might be shared – directly or indirectly – with immigration enforcement agencies and school administrations, which could lead to more intensive oversight of certain populations or otherwise negatively impact them. The IUP makes clear that information from the CGD is not shared outside of the Department for the purposes of immigration enforcement and it is not disclosed to the New York City Housing Authority (NYCHA). In interviews, NYPD confirmed that no outside agency has access to the CGD and further stated that, to date, no records have been provided to any external entities. Department representatives were unaware if any requests for access or information had been submitted by outside parties.

In interviews with OIG-NYPD, representatives of Grassroots Advocates for Neighborhood Groups & Solutions (G.A.N.G.S. Coalition), a coalition of organizers, experts, legal advocates and families working to abolish criminalization and surveillance tools, also expressed concern that NYPD's Social Media Analysis and Research Team (S.M.A.R.T.) was not transparent about the ways in which it assesses

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[20] Similar concerns were voiced by the City Council, the NAACP Legal Defense Fund, the Civil Rights Clinic at NYU School of Law, and the NY State Assembly in letters to OIG-NYPD.
[21] Nick Pinto, *NYPD Added Nearly 2,500 New People to Its Gang Database in the Last Year*, THE INTERCEPT (Jun. 28, 2019 at 11:15 AM), https://theintercept.com/2019/06/28/nypd-gang-database-additions/.
[22] The POST Act, passed in July 2020, requires NYPD to publish policies on its use of "surveillance technologies." N.Y.C. Local Law No. 65 (2020). In early 2021, NYPD posted a draft version of the policy on its website with a 45-day window for public comments. NYPD published a final version of the document 90 days later.
[23] N.Y.C. Police Dep't, *supra* note 5.

an individual's "associations" with criminal groups and how NYPD reviews CGD entries.[24] At the time of those meetings, the IUP had not yet been made public. The final IUP was posted on the Department's website in April 2021, listing the criteria that must be satisfied for an individual to be included in the CGD.

While the IUP is a useful first step in providing transparency, it is generic with respect to information sharing with entities outside of NYPD, and does not make clear the process for inclusion in the CGD. For example, the IUP does not identify by name the external agencies with access to CGD data or with whom data sharing might occur. While the POST Act does not require the IUP to include that information, the extensive public concerns regarding the technology make it prudent and appropriate to provide that information to the public. The IUP also does not clarify the amount and nature of the evidence required to conclude that an individual satisfies the criteria for entry into the CGD. That information, as well as a more detailed description of the type of information contained in the database, should be included in the IUP.[25]

C. Public Concerns Remain about the CGD

While NYPD's June 2018 hearing testimony and the IUP have to some extent informed the public about the CGD, the details provided have not fully addressed

[24] The Social Media Analysis and Research Team (S.M.A.R.T) assesses social media sites for content related to active Department investigations, identifies patterns or trends related to bullying and gang activity, and collects and preserves investigation-related information for evidentiary purposes. Data gathered by S.M.A.R.T. is also used as intelligence by patrol officers and other units within NYPD. S.M.A.R.T. forwards information regarding gang affiliation/membership considered relevant to the CGD to the personnel responsible for data entry and CGD maintenance. Further details with respect to S.M.A.R.T may be found on NYPD's website at: https://www1.nyc.gov/site/nypd/bureaus/investigative/detectives.page.

[25] N.Y.C. DEP'T OF INVESTIGATION, OFF. OF THE INSPECTOR GEN. FOR THE NYPD, AN ASSESSMENT OF NYPD'S RESPONSE TO THE POST ACT (2022), https://www.nyc.gov/assets/doi/reports/pdf/2022/POSTActReport_Final_11032022.pdf (recommending that NYPD identify, in all of its IUPs, each external agency, by name, with which the Department is permitted to share surveillance data).

community concerns about the technology.[26] For example, individuals have historically been unable to determine whether they are included in the CGD. The Legal Aid Society and the Center for Constitutional Rights have filed Freedom of Information Law (FOIL) requests to gather that and other information about the database. In 2018, the Legal Aid Society launched a campaign that asked New Yorkers to "FOIL yourself;" the Department declined to provide the information requested and declined the Legal Aid Society's administrative appeal of that denial, consistent with the Department's historical practice.[27] The Department confirmed that, as of August 2022, it had denied all 423 of the Legal Aid Society's CGD-related FOIL appeals.

The Department's resolution of an administrative appeal can be challenged via an Article 78 petition in court.[28] The Article 78 filing process can be time-consuming and expensive and it is public. To challenge the Department's denial of an administrative appeal seeking information about CGD status, a petitioner must make public the question whether they are included in the CGD. It is therefore not surprising that only five Article 78 proceedings have been brought against NYPD by individuals seeking information about CGD inclusion. NYPD has settled with the individuals seeking information in those matters, and in connection with those settlements,

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[26] As recently as the week of November 14, 2022, activists, lawmakers, attorneys, and former gang-affiliated members of the public gathered to protest NYPD's use of the CGD, as outlined in a GOTHAMIST article by Arya Sundram. Arya Sundram, *NYC criminal justice advocates demand release of NYPD gang database report*, GOTHAMIST (Nov. 18, 2022), https://gothamist.com/news/nyc-criminal-justice-advocates-demand-release-of-nypd-gang-database-report. That demonstration called for the publication of this Report and the adoption of legislation proposed on May 5, 2022, to abolish the database. Sponsored by Councilperson Carlina Rivera of District 2 in Manhattan and Councilperson Tiffany Cabán of District 22 in Queens, among others, the measure, Int. 0360-2022, would require OIG-NYPD to notify persons named in the CGD that they were included and about how to obtain their database records. Violations of the proposed law would be enforced by OIG-NYPD and punishable by civil penalties. The bill remains in Committee, but community groups hope that the legislation will gain traction during the 2022-2023 session. N.Y.C. Council, Int. 0360-2022 (2022);
Legislation pertinent to the CGD has been introduced by members of the Council before, most notably in 2019 with the bill, 1645-2019, which would have required NYPD to notify minors and their guardians of their inclusion into the database unless notification would undermine active criminal investigations. The legislation provided a process for the minor to contest inclusion and gave NYPD 30 days to respond with a justification. It was not adopted. N.Y.C. Council, Int. 1645-2019 (2019).

[27] *Are you in the NYPD gang database?*, THE LEGAL AID SOCIETY, https://legalaidfoil.backspace.com/database; Letter from The Bronx Defenders et al. to N.Y.C. Police Dep't (Feb. 25, 2021), https://www.bronxdefenders.org/wp-content/uploads/2021/02/Written-Comment-on-NYPDs-Draft-Impact-Use-Policies-for-the-Gang-Database-and-Social-Network-Analysis-Tools_BXD_CCR_LAS_LDF.pdf.

[28] N.Y. C.P.L.R. §§ 7801-7806 (CONSOL. 2023).

which are sealed, the Department has turned over CGD-related information.[29] Based on discussions with members of NYPD that handle responses to FOIL requests, since approximately fall 2022, NYPD has taken a different approach to FOIL requests. While NYPD evaluates each request on an individual basis, the Department will generally inform the requestor whether they are, or are not, included in the CGD. If the individual is included, NYPD will provide redacted versions of the DD5s that support inclusion for that individual. If the individual is not in the database, they will be told there are no relevant documents. (For further discussion of FOIL and NYPD's FOIL process with respect to the CGD, see section V.F, *infra*).

[29] *See also infra* Section IX(B) for more information about lawsuits related to the CGD, including Article 78 proceedings.

III. Methodology

During its investigation, OIG-NYPD conducted over 40 hours of interviews with legal experts, members of police oversight agencies, community organizations, and advocacy groups. Those interviews provided important background information regarding public concerns surrounding the use of gang databases in general, and NYPD's version in particular.

OIG-NYPD also interviewed NYPD representatives to understand the structure of the database, the policies and procedures applicable to it, its value to the Department, as well as any updates or changes to the CGD and the processes used to add individuals to the database. Those representatives included the Chiefs of Patrol, Crime Control Strategies, Intelligence Department, the Detective bureaus, as well as the personnel responsible for the modification and maintenance of the database. Further, OIG-NYPD engaged with representatives from five local and regional prosecutors' offices about their use of the CGD and its value in criminal investigations.

OIG-NYPD also reviewed publicly available gang database policies from over three dozen of the largest U.S. police departments, to compare NYPD's policies and practices with respect to the CGD to those of other police forces. The Office also conducted a limited analysis of the potential legal exposure associated with gang databases in general, and the CGD in particular.

In December 2022, OIG-NYPD obtained updated summary data for the 16,141 active entries in the CGD. The Office used the data to analyze the demographic characteristics of individuals in the CGD by category, such as age, gender, and racial/ethnic identifications.[30] (For the results of that analysis, see Section VIII.)

From the more than 16,000 active entries, OIG-NYPD initially obtained a random sample of DD5s for the period of 2013 to 2022, to conduct a more in-depth analysis of trends and patterns, and to more fully understand the CGD activation, renewal, and deactivation processes. During the review of DD5s provided by the Department, OIG-NYPD found that many DD5s lacked sufficient narrative support for determinations related to the activation of individuals into the CGD. In discussions with the Department, it was made clear that the level of narrative support in the DD5s increased in 2018, due to procedural changes made by Department leadership, in particular with relation to Activation DD5s. Those changes were made by NYPD superiors and were associated with the implementation of a new case management

[30] Descriptive statistics about the data, and analysis, are in Appendix C.

structure known as ECMS. The Office therefore obtained an expanded random sample of entries (including supporting documents) for the period from 2018 to 2022. Based on that random sample, OIG-NYPD requested a purposive sample of 26 DD5s, including all youth activated into the database at ages 11 and 12, 11 of those activated when they were 13 years old, and 8 of those activated at 14 years old.[31] In total, the Office conducted a comprehensive analysis of 494 entries, reviewing hundreds of supporting documents including Person Maintenance, Activation, Renewal and Deactivation DD5s. The Office focused on the narrative details in an effort to identify recurrent themes, particularly in the entries for juveniles. The findings from that review are discussed later in the Report.

[31] A purposive sample, in this instance, is a group of documents that are intentionally selected for data collection and analysis, as opposed to a random sample. For details regarding sampling techniques, including the differences between purposive and random approaches, *see* Rebecca S. Robinson, *Purposive Sampling*, *in* 5243 ENCYCLOPEDIA OF QUALITY OF LIFE AND WELL-BEING RESEARCH (Dordrecht Springer, 2014); Martin N. Marshall, *Sampling for qualitative research*, 13(6) FAMILY PRACTICE 489, 522 (1996); Moniruzzaman Sarker & M.A. AL-Muaalemi, PRINCIPLES OF SOCIAL RESEARCH METHODOLOGY, SAMPLING TECHNIQUES FOR QUANTITATIVE RESEARCH 221-34 (M.R. Islam et al. eds., 2022).

IV. Examining the CGD: Potential Harms of Inclusion

A. Public Concerns

In interviews with advocacy and community organizations, the Office heard concerns about the potential harms of inclusion in the CGD. The representatives of those entities expressed fear that inclusion in the database could have negative impacts, such as increased police surveillance, higher cash bail, expulsion from public housing, harsher immigration enforcement, employment discrimination, or, for those in or seeking admission to school, enhanced scrutiny or other disparate treatment by educational institutions.[32] Those entities indicated to OIG-NYPD that awareness of the database and concern about its negative consequences had heightened tensions with and distrust of the police among communities across the City.

Community and advocacy groups highlighted the experiences of several individuals who believed they were negatively affected by inclusion in the CGD. OIG-NYPD learned over the course of its investigation that three of those individuals (Community Members A, B, & C) in fact were included in the CGD.[33] Community Member A (CMA) was detained during a large-scale arrest by NYPD. According to CMA, they were not associated with the other people who were arrested, but were nevertheless charged with multiple offenses and spent more than eighteen months in jail while their case was pending. Many of the more serious charges against CMA were later dismissed; CMA pled guilty to a marijuana charge and was sentenced to time served. CMA believed they were charged in the case because they were in the CGD. However, prosecutors have told OIG-NYPD that CGD inclusion is not the basis for charging decisions, and that inclusion also does not affect plea negotiations. Inclusion in the CGD is not itself evidence of a crime.

Community Member B (CMB) was charged in a criminal case and felt pressured by the prosecutors to provide gang intelligence in order to obtain a plea. CMB claimed that in plea negotiations, prosecutors asserted that CMB was in a gang. CMB said that assertion was baseless; CMB believed that information about their purported gang affiliation must have come from the CGD. CMB's criminal court case was

[32] See, e.g., Communities Fight Back Against Secret NYPD Gang Database, THE NOTICE BLOG (April 24, 2019), https://www.youtube.com/watch?v=N9aw2HfUsns; Groups Urge NYPD Inspector General to Audit the NYPD "Gang Database", HUMAN RIGHTS WATCH (Sep. 22, 2020), https://www.hrw.org/news/2020/09/22/groups-urge-nypd-inspector-general-audit-nypd-gang-database.

[33] The information concerning the three individuals described above came from sources including interview data and media articles. OIG-NYPD has not included the names of the individuals to protect their privacy.

ultimately dismissed. Community Member C (CMC) believed that they were inappropriately targeted by NYPD and had negative encounters with NYPD as a result of being in the CGD, and feared enhanced consequences for even minor interactions with the police. As discussed further herein, however, the CGD is a central repository of criminal group affiliation information maintained by the Department, but it is not the only source of that information, which also resides at the precinct level. Therefore, even if CMC's negative encounters with NYPD were driven by the Department's conclusion that they were affiliated with a criminal group, that determination was not necessarily based on the CGD.

NYPD has historically refused to provide materials in response to FOIL requests concerning CGD inclusion, and members of the community are concerned that they have been added to the CGD based on inaccurate or insufficient information. Thus, uncertainty and fear about CGD inclusion exists, regardless of whether an individual in fact is included or not. OIG-NYPD found (based on discussions with advocacy groups), that such fear is pervasive in New York City, and has decreased the public's confidence in the Department, straining community-police relations. Legal services organizations have also expressed frustration that they cannot easily determine an individual's CGD status, which in their view limits their ability to fully serve their clients.

B. Linking Consequences to the CGD

OIG-NYPD did not find evidence during its investigation that inclusion in the CGD has caused harm to individuals or groups.[34] There are a number of potential reasons for that. First, NYPD maintains gang-affiliation data in various ways other than within the CGD. Therefore, even if the Department's suspicion that an individual is gang-affiliated negatively impacts that person's interactions with members of NYPD, those outcomes may not be attributable to inclusion in the database.

Furthermore, because NYPD does not inform individuals about their inclusion in the CGD, and has previously declined to provide that information in response to FOIL requests, it has been difficult for members of the public to determine if they are in the database. It is therefore difficult for those individuals to assert—and for OIG-

[34] OIG-NYPD did not determine whether inclusion in the CGD in fact negatively impacted the three individuals discussed above.

YPD to assess—whether any negative outcomes that they might experience are in fact related to inclusion in the database.[35]

To determine whether the CGD negatively impacts those included would require the prospective tracking of individuals in the database to identify negative outcomes or experiences across various areas (employment, housing, education) and to determine whether CGD inclusion was the cause of any such outcomes or whether other aspects of that individual's personal history (such as prior convictions) contributed to those outcomes. Such an analysis, even if feasible, is beyond the scope of this Report.

[35] As discussed in section II(C) *infra*, NYPD has historically declined to share CGD inclusion information during the FOIL request and administrative appeal processes. Individuals who have challenged NYPD's position through an Article 78 action have been able to obtain the information, including in connection with confidential settlements.

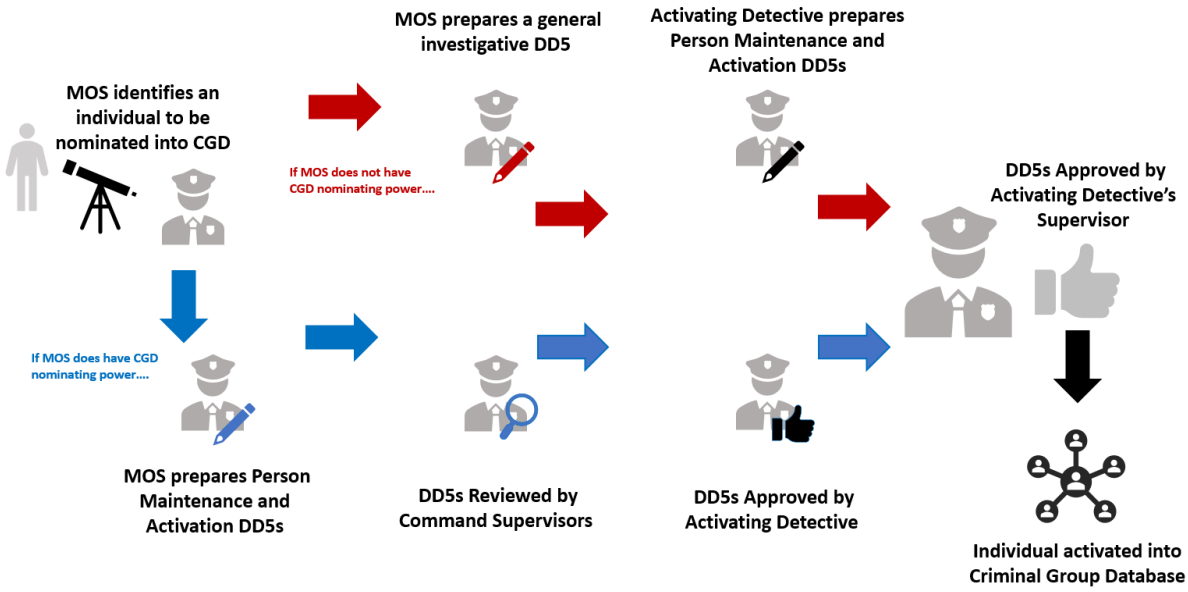
V. Examining the CGD: Processes and Policies

A. Process for entry into the CGD

NYPD's procedures to activate individuals into the CGD have remained largely consistent over time, with the exception of recent changes to the nomination process. A key component of the process that has remained consistent is that one detective with a background in information technology and data analysis is assigned to evaluate all DD5s related to individuals who are to be activated into the database, or to be reviewed for either renewal or deactivation. A supervisor must review and approve the activation determinations; renewal and deactivation determinations are not reviewed. At present, only the detective and their supervisor are authorized to add individuals to the database.

Activation into the CGD

Figure 1: Entry Activation Process



Until recently, the nomination process required that a detective at the precinct or alternate command level complete the Person Maintenance and Activation DD5s, which would note behaviors and/or activities related to criminal group involvement. A squad supervisor then reviewed the DD5s for accuracy and appropriateness. If the nomination was deemed acceptable, the supervisor would advance the DD5s for review and approval by a more senior official (termed "endorser"). Once approved, the

nominating DD5s would be advanced for formal activation into the CGD, by the detective responsible for activation and that detective's supervisor. This is the four-level review and approval process that is described in Finding 7.

For those below the age of 18, nominations were required to go before the Chief Inspector's Gang Review Panel (led by a senior ranking member of the Department) before activation was completed. However, the gang review panel no longer exists. OIG-NYPD's investigation did not determine when this change was made or why. As far as the Office is aware, no policies were issued to explain the change in process or to provide any specific guidance to officers concerning the nomination and activation of juveniles in the database.

Sometime over the last two years, there have been other changes to the nomination process as well, including the narrowing of the group of individuals authorized to nominate individuals for inclusion in the CGD. Only the Intelligence Division presently has what is referred to as "nominating authority" – meaning that officers within that Division can complete Person Maintenance and Activation DD5s and propose inclusion. It is unclear precisely when those changes occurred. Current practice requires officers in commands without nominating authority (that is, other than in the Intelligence Division), to complete a general investigative DD5 and forward it to the activating detective.[36] The activating detective then creates Person Maintenance and Activation DD5s for the nominee. If the activating detective's supervisor reviews the Person Maintenance and Activation DD5s and determines that they are accurate and that the forms provide a sufficient basis for inclusion, the nominated individual is activated into the CGD. Therefore, nominations by officers without nominating authority involve two levels of review, that is, by the activating detective and the detective's supervisor. Nominations made by officers in the Intel Division are subject to three levels of review. First, Person Maintenance and Activation DD5s are prepared by officers within the Intel Division and reviewed by their supervisors in that Division (Level 1). Those documents are then passed to the activating detective (Level 2) and their supervisor (Level 3) for approval before being formally entered into the CGD. (The details of the process are graphically depicted in Figure 1, entitled "Entry Activation Process" above.)

[36] The general investigative DD5 is used by NYPD personnel for purposes including the cataloguing of information pertinent to active cases and engagement with the public. Based on information obtained in OIG-NYPD's investigation, any information relevant to gang affiliation captured on the general investigative DD5 also would be included in the Person Maintenance and Activation DD5s. OIG-NYPD did not review general investigative DD5s as part of the sample entry review.

B. Criteria for entry into the CGD

There are two sets of criteria for inclusion in the CGD – "Option A" and "Option B." Option A requires at least one of the following, which must be documented on the DD5:

1. The individual "self-admits" membership in a criminal group to a member of NYPD or via posts on the individual's own social media account indicating membership, such as photographs, colors, or language and symbols frequently used by a criminal group. (As defined in the IUP for the database, self-admission of criminal group membership involves an unambiguous statement concerning participation in a criminal group, made to a member of the Department staff (for example during questioning by law enforcement) or social media posts in which membership is "clearly articulated"); or
2. Over the course of an investigation, there is a reasonable belief that the person is in a criminal group and that person is identified as a member of a criminal group by two independent and reliable sources which can include NYPD precinct personnel, Intelligence or Detective Bureau Investigators, School Safety Agents, staffers employed by the Administration for Children's Services (ACS) Juvenile Justice component, Department of Corrections employees, or representatives from external agencies.[37]

Option B requires at least two of the following for database inclusion, which must also be documented on the DD5:

1. Frequent presence at a known criminal group location;
2. Possession of criminal group-related documents;
3. Association with known criminal group members;
4. Social media posts with known criminal group members while possessing known criminal group paraphernalia;
5. Scars and tattoos associated with a particular criminal group; or
6. Frequent wearing of the colors and frequent use of hand signs that are associated with particular criminal groups.[38]

While Option B requires at least two of the above-referenced six factors that indicate that an individual is gang-affiliated, certain aspects of Option A have a less rigorous standard. While Part 1 of Option A (requiring "self-admission" of criminal group

[37] The entry criteria do not define, and OIG-NYPD is not aware of any written policy that addresses the nature and quantity of evidence sufficient to establish a "reasonable belief."
[38] NYPD has not defined "frequent" in this context.

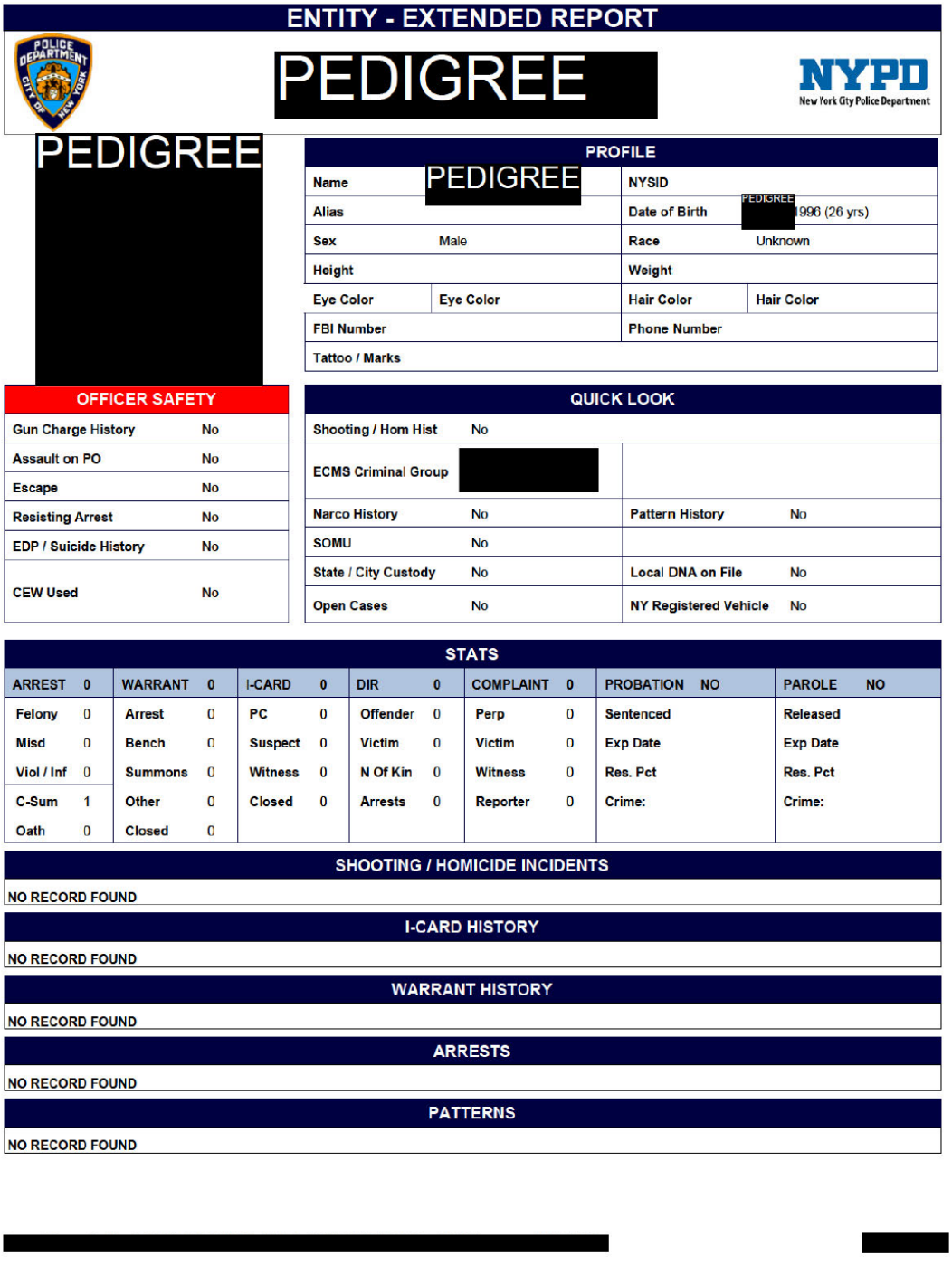
affiliation) is consistent with Parts 4, 5, and 6 of Option B (the Option B criteria that could be deemed a self-admission), Option A does not require the reporting officer to specify on the DD5 which of the "self-admission" standards were met: social media admission or an in-person admission. Nor does Part 1 of Option A require two different factors to be satisfied to support a social-media based self-admission, nor does it define what qualifies as a self-admission in that context, beyond the requirement that membership must be "clearly articulated". Part 2 of Option A requires that during an investigation, there is a reasonable belief that an individual is in a gang and that individual is identified as gang-affiliated by "two independent and reliable sources."

C. Limitations to accessing the CGD

The investigation revealed that activation, deactivation, or review of the CGD's full contents is limited to a small number of personnel within the Department, including those described in a preceding section – that is, the detective who approves activations, renewals, or deactivations, and their supervisor.

While the authority to activate, renew, and deactivate individuals from the CGD is limited, access to criminal group affiliation information from the database is widely available throughout NYPD. According to the Department, any uniformed member of the force can utilize DAS to run a search of an individual that will return, where applicable, gang affiliation information. For example, if an officer runs a DAS search on the driver of a vehicle who has been stopped, the search request will go through all of NYPD data sources that the officer is permitted to access and return a list of results. If the driver has a record within the CGD, that result will be populated for the officer along with other relevant information. The CGD result will include the driver's name and criminal group membership; see Figure 2 below for an example of such a search result page. (The field in Figure 2 designated, "EC MS Criminal Group," is populated with information from the CGD—specifically the name of the criminal group with which the individual is allegedly affiliated—but has been redacted for purposes of this Report due to safety concerns raised by NYPD). The estimated 10,000 officers with in-depth access to the database can see the profiles of the individuals in it (with information including, but not limited to their names, alleged gang affiliations, histories of criminal justice engagement, and the criteria that resulted in inclusions, such as group location). That is, those officers can see the maintenance, activation and, if applicable, renewal DD5s that support the inclusion of individuals in the database.

Figure 2: Sample Search Result from DAS



ENTITY - EXTENDED REPORT

PEDIGREE

NYPD New York City Police Department

PEDIGREE

PROFILE

Name	PEDIGREE	NYSID	
Alias		Date of Birth	PEDIGREE 1996 (26 yrs)
Sex	Male	Race	Unknown
Height		Weight	
Eye Color	Eye Color	Hair Color	Hair Color
FBI Number		Phone Number	
Tattoo / Marks			

OFFICER SAFETY

Gun Charge History	No
Assault on PO	No
Escape	No
Resisting Arrest	No
EDP / Suicide History	No
CEW Used	No

QUICK LOOK

Shooting / Hom Hist	No		
ECMS Criminal Group			
Narco History	No	Pattern History	No
SOMU	No		
State / City Custody	No	Local DNA on File	No
Open Cases	No	NY Registered Vehicle	No

STATS

ARREST 0	WARRANT 0	I-CARD 0	DIR 0	COMPLAINT 0	PROBATION NO	PAROLE NO
Felony 0	Arrest 0	PC 0	Offender 0	Perp 0	Sentenced	Released
Misd 0	Bench 0	Suspect 0	Victim 0	Victim 0	Exp Date	Exp Date
Viol / Inf 0	Summons 0	Witness 0	N Of Kin 0	Witness 0	Res. Pct	Res. Pct
C-Sum 1	Other 0	Closed 0	Arrests 0	Reporter 0	Crime:	Crime:
Oath 0	Closed 0					

SHOOTING / HOMICIDE INCIDENTS

NO RECORD FOUND

I-CARD HISTORY

NO RECORD FOUND

WARRANT HISTORY

NO RECORD FOUND

ARRESTS

NO RECORD FOUND

PATTERNS

NO RECORD FOUND

D. Process for reviewing entries in the CGD

NYPD's practice is to consider entries in the CGD for removal on a rolling basis. The detective responsible for activation (see above) is also responsible for assessing individuals in the database for potential removal. Those entered as minors are assessed every two years from the date they were added, while they remain under the age of 18. Once they turn 18, that review occurs every three years. For example, for someone entered on their 16th birthday, reviews would happen on their 18th (two years following activation) and then again, on their 21st birthdays (three years). Someone entered at age 16 and a half would be reviewed three years later, at age 19 and a half. Historically, entries were reviewed in the database on the 23rd and 28th birthdays of those included (as stated in the IUP).[39] Auto-generated emails are sent to the assigned detective to prompt the review.

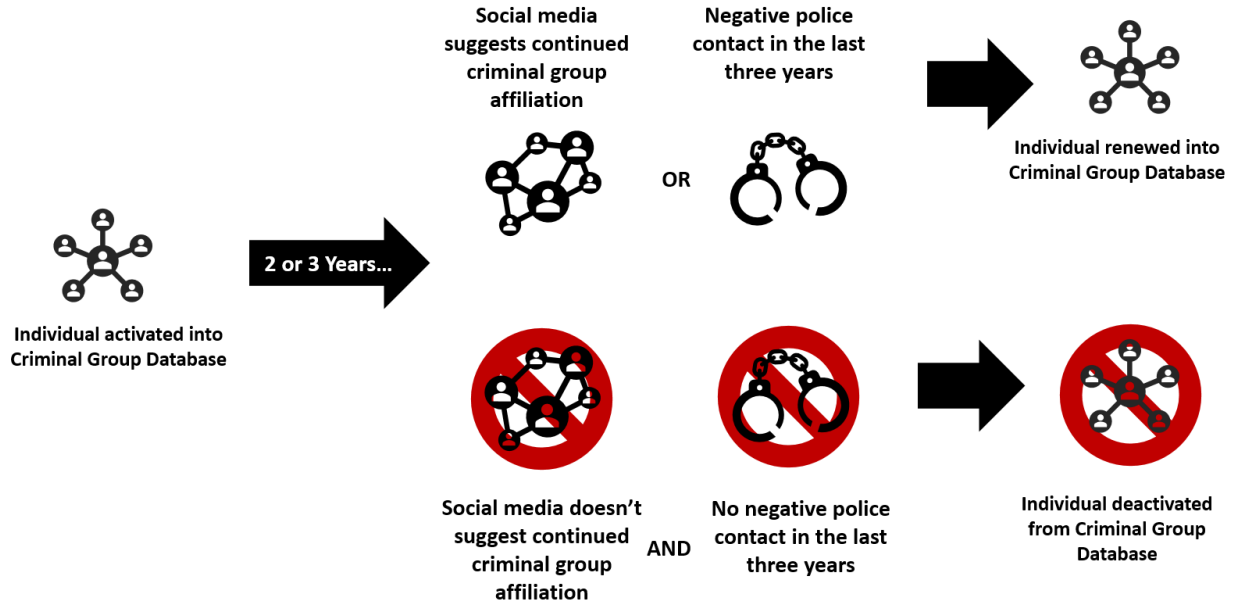
However, there is no mechanism that ensures that the required review of CGD entries actually occurs as scheduled. The same detective who is responsible for the activation of individuals into the database is also charged with the review of entries, which increases the likelihood of delays in the review process. Given the size of the CGD, and the review timelines, it is unsurprising that OIG-NYPD found that of the sample of 494 individuals activated into the database since 2018, 179 (approximately 36% of the sample) should have been reviewed per NYPD policy as of the date that OIG-NYPD received materials relevant to the review, but in fact those individuals had not been reviewed. Of the 179 individuals missing reviews, 141 were adults and 38 were minors. Two hundred and eleven of the 494-member sample were reviewed, but of that group, 193 entries were evaluated later than the 2- and 3-year periods stipulated by Department policy, based on the dates of the DD5s. Based on OIG-NYPD's sample, the average delay in reviewing entries in the CGD was 69.1 days, 28.9 for adults and 188.9 for minors.[40]

Due to the delays in evaluations beyond the time-frame set out in NYPD policy, there is a risk that some individuals who are no longer gang-affiliated, and who would have been removed had they been subject to timely examinations, remain in the database. To the extent possible, NYPD should create conditions and make available the resources necessary to ensure prompt reviews.

[39] N.Y.C. Police Dep't, *supra* note 5.
[40] Of the 494-entry sample, 104 were either not due for review as they had not yet been activated for the necessary length of time (i.e., two years for minors or three years for adults) to require renewal reviews or the entries had been reviewed and subsequently, deactivated from the CGD.

Renewal/Deactivation Process

Figure 3: Entry Renewal Process



The review of CGD entries for renewal or deactivation was found by OIG-NYPD to focus on factors distinct from the Option A or B pathways used for activation purposes. While the DD5 renewal form references the Option A and B criteria, those factors do not appear to drive the renewal determination. Rather, individuals were maintained in the CGD when they were found to have qualifying police contacts or arrests for the period preceding the review. Entries were also sustained in the database if borough gang squads or Field Intelligence Officers (FIOs) confirmed that individuals were still gang-affiliated or had relevant social media activity indicating criminal group involvement. If a person is renewed following such a review, a DD5 will be created reflecting the reasons for that decision. However, there are no written guidelines to assist the officer in determining whether an individual should be renewed in the database or how to complete the renewal evaluation.

NYPD noted during several interviews that qualifying police contact for renewal is limited to incidents determined to be "in furtherance of gang activity." While the Department does not maintain a list of qualifying incidents, unit personnel explained that, for example, felony shootings, criminal grand larceny, and armed robbery likely are "qualifying." (Figure 3, entitled "Entry Renewal Process" depicts the process undertaken to evaluate and maintain individuals in the CGD.)

E. Removal process for entries in the CGD

If an entry is "deactivated" in the database, the related supporting files will remain in the system, but the criminal group affiliation details will not surface in DAS search results, or other searches of ECMS, meaning that the ECMS Criminal Group field will remain empty. If NYPD finds in the future that a deactivated person has become affiliated with a criminal group, that individual's information must be reentered into the database through the same activation process discussed above, which applies to all new additions to the CGD.

F. The Freedom of Information Law (FOIL) and the CGD

The Legal Aid Society has advocated for NYPD disclosure of CGD status to members of the public, has represented members of the public seeking information about their CGD status, and has used FOIL as a mechanism to obtain that information.[41] NYPD has routinely denied FOIL requests for CGD inclusion information and the Legal Aid Society has obtained such information only after litigating against NYPD.

FOIL is a New York State statute that creates a framework for members of the public to obtain access to government records.[42] When a FOIL request is submitted, a government agency must provide the records sought or identify a statutory exception that permits the agency to deny the request.[43] As relevant here, an agency may deny a request for records that "are compiled for law enforcement purposes," where disclosure would: "i. interfere with law enforcement investigations or judicial proceedings; ii. deprive a person of a right to a fair trial or impartial adjudication; iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures."[44]

In New York City, FOIL requests generally are received through the NYC Open Records portal,[45] and are typically managed by a Records Access Officer (RAO).[46] The RAO grants or denies the request and provides written notification of the reason for

[41] N.Y. PUB. OFF. LAW §§ 84-90 (CONSOL. 2023). Although CGD FOIL requests have likely been submitted by individuals other than those served by the Legal Aid Society, OIG-NYPD is only aware of the Legal Aid Society's requests. NYPD's available search functionality, consistent with that of other City agencies, cannot be searched by requestor or by type of request.
[42] N.Y. PUB. OFF. LAW § 84 (CONSOL. 2023).
[43] N.Y. Pub. Off. Law § 87(2) (Consol. 2023).
[44] N.Y. PUB. OFF. LAW. § 87(2)(e)(i.)-(iv) (CONSOL. 2023).
[45] N.Y.C. Freedom of Information Law (FOIL) Request Filing System, https://a860-openrecords.nyc.gov/.
[46] N.Y.C. CHARTER CH. 43 § 1-03.

denial.[47] Denials may be appealed to an appeals officer within the agency, who can affirm the denial (with an explanation) or reverse it.[48] When an appeal is denied, the requestor may challenge the denial in state court through an Article 78 proceeding,[49] in which the agency bears the burden to prove that the records fall under a FOIL exception and may be shielded from disclosure.[50]

Since approximately 2018, the Legal Aid Society has used the FOIL process to determine whether its clients are in the CGD.[51] It has submitted approximately 550 FOIL requests to NYPD for this information. NYPD has denied approximately 98% of those requests; until October 2022, it also denied all of the related appeals. In addition, since 2018, the Legal Aid Society has brought five Article 78 proceedings seeking judicial review of NYPD's CGD FOIL decisions.[52] To OIG-NYPD's knowledge, each matter was settled and in most of the cases, at least some CGD-related information was disclosed in connection with the settlement.

According to NYPD, its handling of CGD-related FOIL requests changed in the fall of 2022. Prior to that time, NYPD denied every CGD-related FOIL request based on NYPD's position that the DD5s responsive to the FOIL requests would reveal non-routine criminal investigative techniques or procedures, and thus satisfied the fourth exemption set out above. Every FOIL request thus appears to have been denied regardless of the specific content of the underlying DD5s; each appeal also was denied as a routine matter. NYPD has confirmed to this Office that it denied every CGD-related FOIL appeal regardless of the specific basis for the individual's entry into the CGD. Therefore, even if an individual admitted to gang membership in a police interrogation (which in this Office's view is a routine law enforcement technique) and was entered into the CGD on that basis, the FOIL request would be denied.

In December 2022, during this investigation, OIG-NYPD learned that NYPD planned to take a different approach to CGD-related FOIL requests. NYPD stated that, while each FOIL request will continue to be reviewed individually, going forward, the Department will generally release certain information for CGD-related FOIL requests. In particular, the RAO will pull the underlying CGD DD5s, redact any

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[47] *Id*.
[48] N.Y. Pub. Off. Law § 89(4)(a) (Consol. 2023); N.Y.C. Charter Ch. 43 § 1-06.
[49] N.Y. PUB. OFF. LAW § 89(4)(b) (CONSOL. 2023); N.Y. C.P.L.R. §§ 7801-7806 (CONSOL. 2023); N.Y.C. CHARTER CH. 43 § 1-06.
[50] N.Y. Pub. Off. Law § 89(4)(b) (Consol. 2023).
[51] *Are you in the NYPD gang database?*, THE LEGAL AID SOCIETY, https://legalaidfoil.backspace.com/database.
[52] *McGriff v. NYPD*, 157400/2022 (N.Y. Sup. Ct. 2022); *J.F. v NYPD*, 452565/2022 (N.Y. Sup. Ct. 2022); *Peele on behalf of minor child, D.B., v. NYPD*, 153099/2022 (N.Y. Sup. Ct. 2022); *Smith v. NYPD*, 160838/2021 (N.Y. Sup. Ct. 2022); *Shenery v. NYPD*, 160935/2018 (N.Y. Sup. Ct. 2020).

sensitive information, such as an officer's personal information or photos of other individuals, and turn over the redacted DD5s, unless the fact of inclusion in the CGD might jeopardize an investigation or reveal sensitive information. NYPD also stated its recent practice has been to inform the Legal Aid Society, if asked, whether an individual client was or was not in the CGD, to avoid receiving FOIL requests for individuals who were not in the database. The Department further stated that, consistent with this new approach, in October 2022, it granted a CGD FOIL appeal for the first time. NYPD noted that the change in practice came about as a result of the Article 78 litigation that ensued following FOIL request denials, as well as the outcomes – i.e. the settlements reached – in that litigation. NYPD has informed this Office that it changed its approach based on evaluating that prior litigation, which resulted in a reconsideration of the applicability of the exemptions to FOIL on which NYPD previously relied. NYPD's new approach to those requests is not memorialized in writing.

NYPD's new posture toward CGD FOIL requests should, in most cases, allow members of the public who are concerned about their CGD status to confirm whether or not they are in the CGD and therefore; to explore whether they have experienced any negative outcomes as a result of their inclusion. However, there are substantial administrative costs to this approach, which will require review and potential redaction of voluminous DD5s, depending on the volume of FOIL requests. NYPD should memorialize its new approach in a written policy, create a process to manage requests and productions, which may call for extensive redactions, and allocate sufficient resources to those tasks.

VI. Results of the CGD and DD5 Data Analyses

This section of the Report discusses findings from a descriptive analysis of the 16,141 active entries within the CGD and from the assessment of two samples of entries and their supporting DD5s. Sample 1 consisted of active CGD entries and supporting documents for 494 adults and minors who were added to the CGD from 2018 through 2022. Sample 1 was examined with a focus on the process and supporting information for inclusion, renewal, or deactivation of individuals. Sample 2 consisted of 26 entries and related documentation for juveniles between 11 to 14 years old, from 2013 through 2022. It was examined with a focus on the same processes in the context of juveniles specifically.[53] The Person Maintenance, Activation, and Renewal DD5s that are referenced throughout the section are included in Appendix A.[54]

A. Analysis of Currently Active CGD Entries

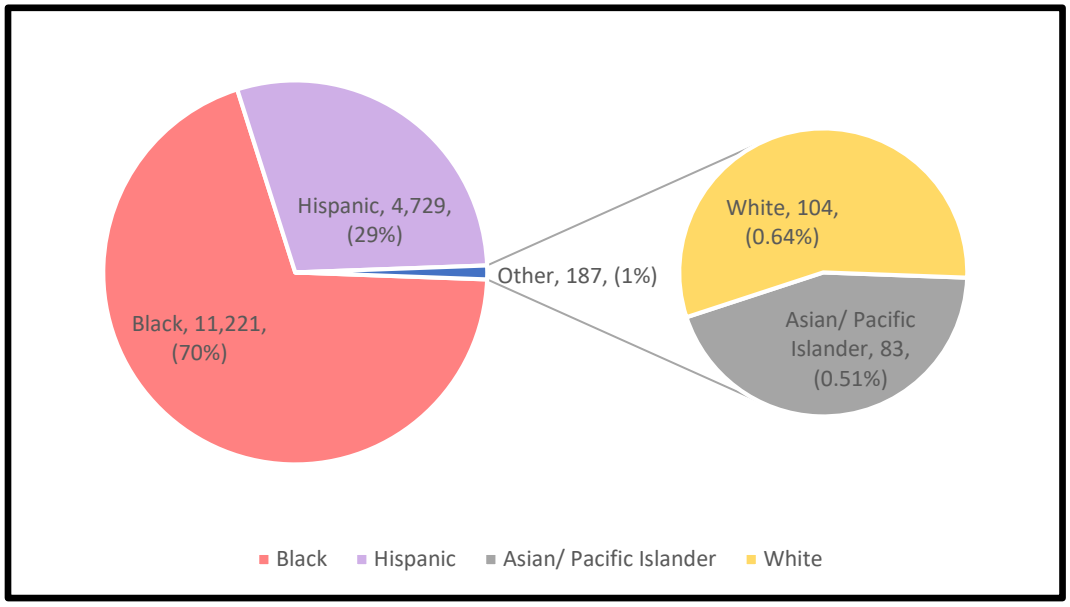
OIG-NYPD considered the total number of active entries in the database (as of December 2022) with respect to demographics such as age, gender, and racial/ethnic identification in order to further examine inclusion determinations.[55]

[53] As of December 2022, the CGD included 16,141 active entries.

[54] In its analyses of the two samples of individuals included in the CGD and their supporting DD5s, OIG-NYPD focused on the application of criteria required for activation (a qualitative review), in addition to, where possible, quantifying the number of occasions on which the application of those criteria or the evidence supporting the existence of the criteria, raised concerns (a quantitative review). Qualitative data assessment considers information that cannot be easily counted, measured or expressed numerically. That mixed methods strategy enabled OIG-NYPD to identify issues, including processes in need of improvement, even if a purely quantitative evaluation would be difficult to conduct. For more information on the differences between qualitative, quantitative and mixed methods data analytical approaches, *see*, *e.g.*, *Data Module #1: What is Research Data?*, MAC DEWITT WALLACE LIBRARY, https://libguides.macalester.edu/c.php?g=527786&p=3608639 (last visited Apr. 16, 2023); *Qualitative Data*, NIH NATIONAL LIBRARY OF MEDICINE, https://www.nnlm.gov/guides/data-glossary/qualitative-data (last visited Apr. 16, 2023); *Community Engagement Program – Mixed Methods Research*, HARVARD CATALYST, https://catalyst.harvard.edu/community-engagement/mmr (https://catalyst.harvard.edu/community-engagement/mmr). OIG-NYPD did not analyze Deactivation DD5s. Though they were included among the documents related to sample entries that OIG-NYPD received, they contain more limited information than other types of DD5s and there were relatively few of them.

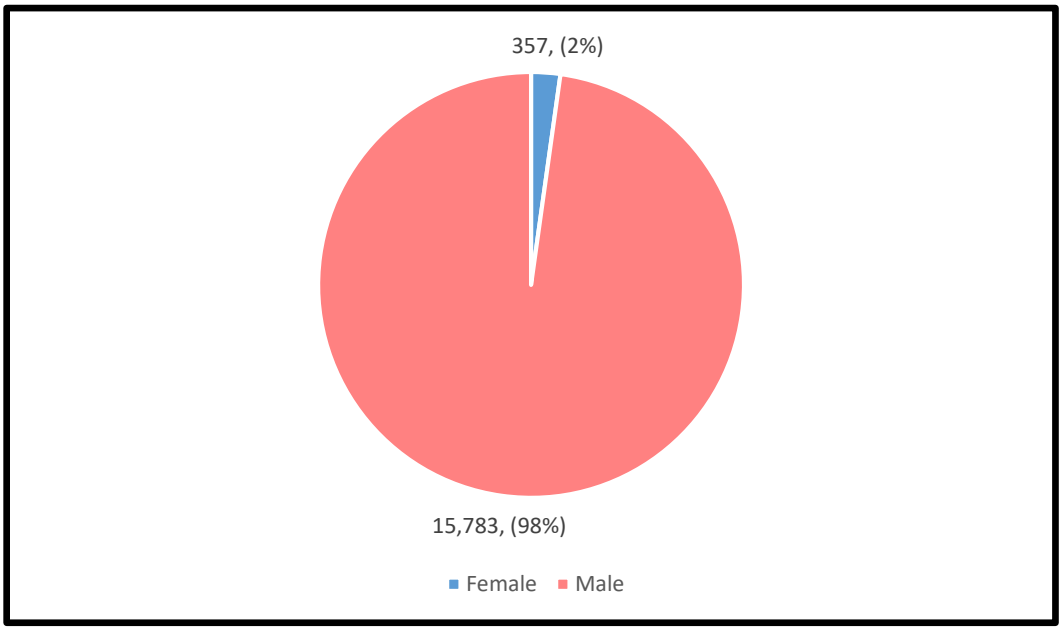
[55] Additional information about the Office's statistical analysis of the CGD data is included in Appendix C.

Figure 4: Active CGD Entries by Racial and Ethnic Identifications



The composition of the CGD has remained largely Black and Hispanic since it was created, with the two groups constituting 99% of all entries.

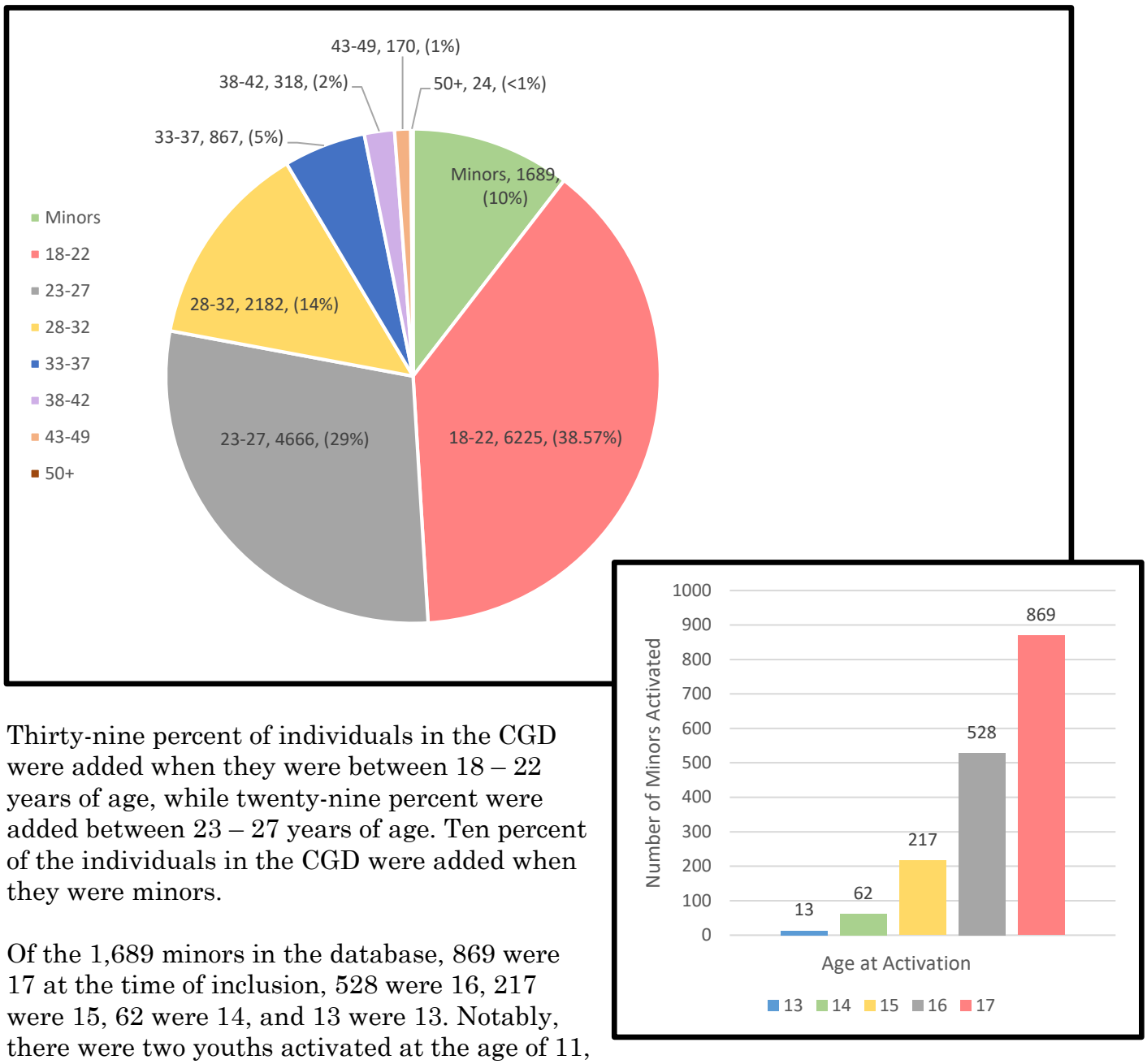
Figure 5: Active CGD Entries by Gender[56]



[56] There are fewer total entries referenced in this table due to entries where gender is marked "unknown."

Among the active entries, a vast majority of those in the database are male.

Figure 6: Active CGD Entries by Age at Activation; with Minors in Inset



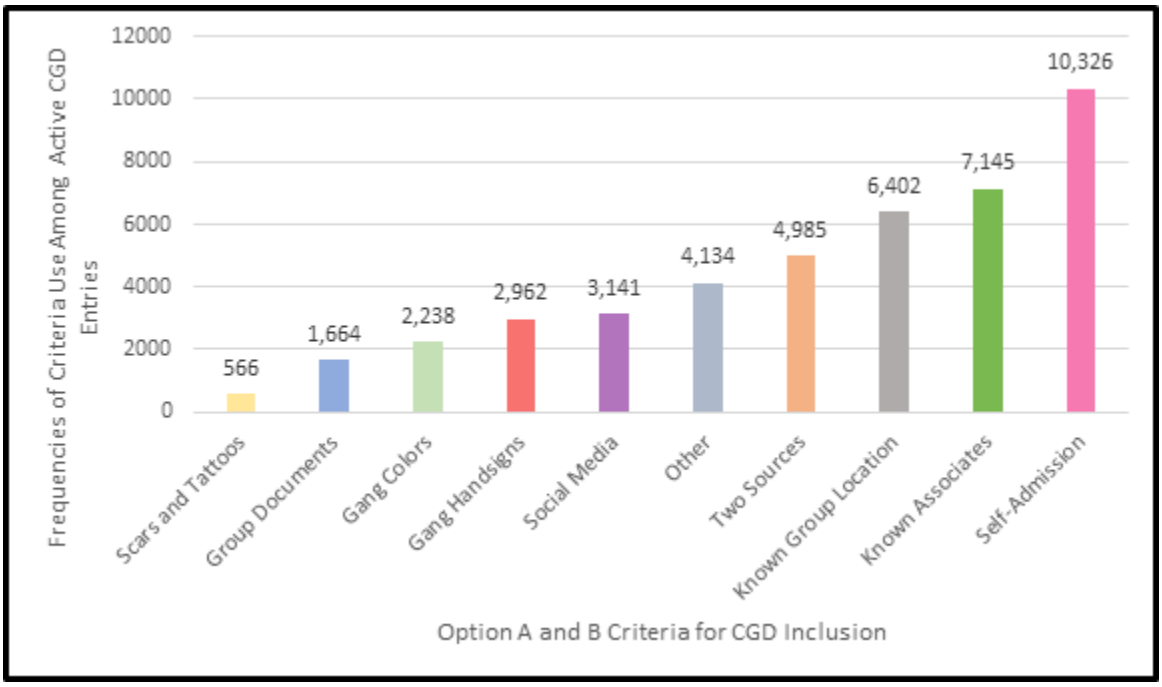
Thirty-nine percent of individuals in the CGD were added when they were between 18 – 22 years of age, while twenty-nine percent were added between 23 – 27 years of age. Ten percent of the individuals in the CGD were added when they were minors.

Of the 1,689 minors in the database, 869 were 17 at the time of inclusion, 528 were 16, 217 were 15, 62 were 14, and 13 were 13. Notably, there were two youths activated at the age of 11,

and 5 were activated when they were 12 years old; however, those individuals are no longer active.[57]

Figure 7, below, entitled, "Net Count of Activation Pathways for Active CGD Entries," demonstrates the frequencies with which criteria were applied by reporting officers as a basis to include individuals in the database. The most common reason cited to support entry into the database was self-admission, either via police debriefings or social media posts, at 10,326 times. The second-most common reasons were associations with known gang members ("known associates"), followed by the presence of individuals at locations deemed to be gang related ("known group locations"). Scars and tattoos, and group documents, were the least common reasons cited to support entry into the CGD.

Figure 7: Net Count of Activation Pathways for Active CGD Entries[58]



As Table A demonstrates, of the total active entries in the CGD, 7,104 individuals were activated on the basis of Option A criteria alone; while 7,104 were activated on

[57] While examining all entries into the CGD, including inactive entries, OIG-NYPD noted that at points in the past, juveniles as young as 11 or 12 were present in the database (now deactivated), which prompted OIG-NYPD to evaluate a sub-set of youth-related entries.
[58] The Option A and Option B criteria overlap, and Option B requires the identification of two criteria to support database entry. For that reason, the total number of "entries" in Figure 6 far exceeds the number of active entries in the CGD.

the basis of a combination of Option A and B criteria. One thousand and ninety-nine individuals were activated on the basis of Option B criteria alone.

Table A: CGD Entries, By Race and Entry Criteria[59]

	OPTION A ONLY	OPTION B ONLY	BOTH	TOTAL
American Indian	1	0	0	**1**
Asian/Pacific Islander	32	10	41	**83**
Black	4,574	1,375	5,272	**11,221**
Hispanic	2,443	539	1,747	**4,729**
White	54	9	41	**104**
N/A	0	0	3	**3**
ALL	**7,104**	**1,933**	**7,104**	**16,141**

B. Flaws in the CGD Inclusion and Renewal Process[60]

Insufficient Support for Entries

[59] A modified version of this table, which expresses those values as percentages of the total active entries in the CGD, as well as some additional analysis is included in Appendix C.

[60] Three types of DD5s are discussed in this section; the Person Maintenance, Activation and Renewal DD5s. The documents serve different purposes in the activation and renewal processes (see Appendices A and B). The Person Maintenance DD5 is the first of those documents created in support of database inclusion and contains summary information such as arrest histories, scar/marking/tattoo details, social media account data, locations frequented by the individual, search tags or phrases related to the individual and in some cases, attachments that support the determination that an individual is gang-affiliated. The Activation DD5 has some of the same information, such as arrest histories, demographic details, the criteria on which the nomination is based and a narrative description of the basis for inclusion. In addition to those details, the activating detective and their supervisor sign the Activation DD5, affirming that they have examined the evidence and concur with the individual's inclusion in the CGD. The Renewal DD5 is intended to be used to support an individual's remaining in the database following a review (currently every two years for minors and every three years for adults), and is intended to include details consistent with that of the Activation DD5, but in practice, renewal generally is based on factors other than those cited in support of database entry. As indicated herein, the Office's sample review identified distinct issues with respect to the information contained in each of these three documents.

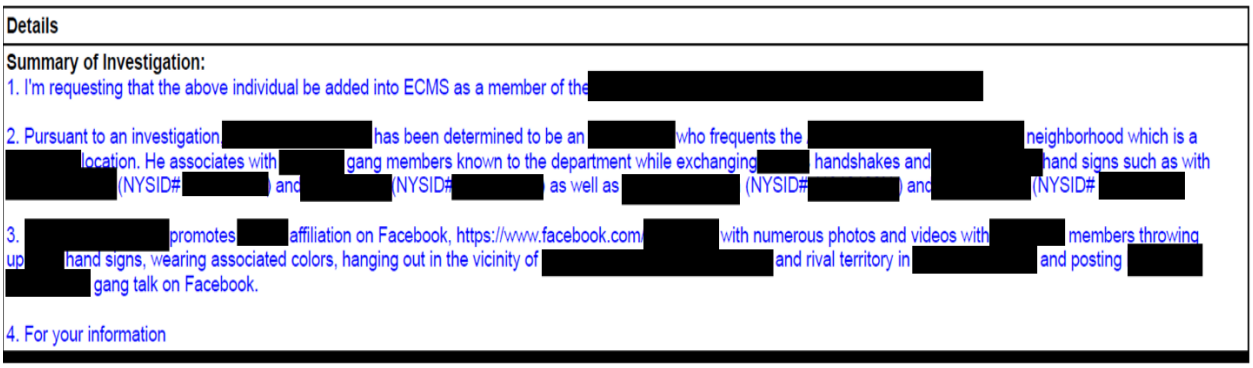
As discussed above, an internal practice shift in 2018 required officers to provide more detailed narratives in their DD5s to support a nomination of an individual to be included in the CGD. Despite this shift, OIG-NYPD identified numerous DD5s for approved entries in which the narrative sections lacked sufficient detail, and simply requested that an individual be added to the CGD with little, if any, stated basis. Examples of insufficient narratives in DD5s are as shown in the table below:

Table B: Insufficient DD5 Narratives

1. "On [DATE], the undersigned is requesting that [Name of Subject] be entered into ECMS as a member of [GANG]."
2. "Activate [Name of Subject] to RGTM."
3. On [DATE], the above-mentioned individual is being entered as a member of [GANG]."
4. "On [DATE], I am activating [Name of Subject] into the CGD as a newly identified member of [GANG] after conducting a short-term investigation through social media."
5. "On [DATE], the undersigned is requesting [Name of Subject] be entered in as a [GANG] member."
6. "Above named has been identified as a criminal group member of [GANG] through social media."
7. "On [DATE], activate [Name of Subject] into the [CGD]."

Figure 8 below is an example of a DD5 narrative with adequate detail.

Figure 8: Sufficient Narrative


Details

Summary of Investigation:
1. I'm requesting that the above individual be added into ECMS as a member of the [redacted]

2. Pursuant to an investigation [redacted] has been determined to be an [redacted] who frequents the [redacted] neighborhood which is a [redacted] location. He associates with [redacted] gang members known to the department while exchanging [redacted] handshakes and [redacted] hand signs such as with [redacted] (NYSID# [redacted]) and [redacted] (NYSID# [redacted]) as well as [redacted] (NYSID# [redacted]) and [redacted] (NYSID# [redacted])

3. [redacted] promotes [redacted] affiliation on Facebook, https://www.facebook.com/[redacted] with numerous photos and videos with [redacted] members throwing up [redacted] hand signs, wearing associated colors, hanging out in the vicinity of [redacted] and rival territory in [redacted] and posting [redacted] gang talk on Facebook.

4. For your information

Insufficient Reviews of Activations

According to the Department, four levels of review were previously required to activate an individual into the CGD. (As noted above, current practice involves two or three levels of review only, depending on the origin of the nomination proposal within NYPD). Based on the 494-sample reviewed by OIG-NYPD, 90% of the time NYPD used that four-level review structure, but approximately 10% of the time, one

individual served in multiple roles in the nomination process, limiting the ability of NYPD to ensure only suitable for inclusion in the CGD are in fact activated.

Missing and Late Reviews

NYPD affirmed that current policy requires the review of an individual's status every three years if the person was activated as an adult, and every two years if activated as a minor, and until they turn eighteen.

As discussed above, of the 494 entries reviewed by OIG-NYPD, 211 individuals had been reviewed and subsequently renewed into or deactivated from the CGD. The average delay in review was 69.1 days. Delays in the reviews of minors were more significant, averaging a 188.9-day delay, compared to an average 28.9-day delay for adults.

Additionally, of the 494 members sample, 179 individuals, or 36.2%, were due for a review, but none had been conducted. Of those 179 individuals, 141 were adults and 38 were minors.

Insufficient Documentation of Renewal Justifications

Police contact was the principal justification for a determination that an individual should remain in the database after a review (termed a "renewal"). Police contact included, but was not limited to, arrests, warrants, I-CARDS, parole, or being in state custody. Per NYPD's practices, as explained to OIG-NYPD, arrests for certain types of misconduct – such as a suspended driver's license – are not sufficient to warrant renewal in the database. However, since little guidance is provided with respect to renewal determinations, and no written policy with respect to the nature of qualifying police contact exists, the detective handling the reviews had considerable discretion in this area. OIG-NYPD was informed that the detective typically has 400-450 entries to review on a daily basis, representing a heavy workload. Furthermore, the DD5s often did not contain sufficient explanations of the nature of the police contact purporting to support renewal, and where such details were provided, there was often no documentation of the police contact or other bases on which to assess the appropriateness of the detective's determinations. Those circumstances made clear that written guidance with respect to qualifying police contact and documentation is necessary, and that the review process would benefit significantly from increased staffing.

For renewals that were unrelated to police contact, other problems were identified. Within the sample of DD5s examined, several individuals were maintained in the CGD as a result of their social media accounts remaining online after activation occurred. Renewals made on that basis were rarely accompanied by sufficient evidence to support continued inclusion apart from the continued use of social media accounts, and the renewal DD5s generally did not include, for example, the specific content and date of the social media posts within the accounts supporting renewal.

No Multilevel Process for Renewal Evaluations

In contrast with the entry activation process, NYPD officials confirmed that there is no multilevel review process for the renewal DD5s. The single detective that is responsible for performing the assessments makes the determinations about renewals and their supervisor weighs in only occasionally. That lack of an oversight mechanism places significant discretion in the hands of one officer.

Procedural Issues in the Renewal of Minors

Per NYPD policy, when adults are renewed within the CGD, the justifications that are customarily used relate to any relevant police contact within the preceding three years (i.e., arrests, parole decisions, in state/city custody changes) or due to social media activity that indicates involvement with known criminal groups. More than 90% of the reviewed entries were renewed because of some type of police contact.

However, in the case of at least three minors (whose entries must be reviewed every two years until they turn 18 and upon reaching adulthood, every three years), Renewal DD5s included narrative justifications stating, in effect, that the minor should be renewed due to their entry being less than three years old. That reasoning did not align with the Department's practices as expressed and observed in the DD5s.

In one case, an individual who was activated into the gang database at 15 years-old was reviewed at 17, as would be expected for a minor. Despite a timely review, neither the Activation or Renewal DD5s articulated a) police contact that would warrant renewal, or b) social media activity that suggested gang participation. The individual was renewed into the database, with the justification listed as "entry less than 3 years

old." Another individual, who was activated at 16 years-old and reviewed a month after turning 18, likewise had their enrollment in the gang database extended exclusively because they were activated two-years prior.

While those instances were rare, their deviation from established NYPD practices, particularly given the lack of any other substantive justifications for renewal, are concerning.

C. Concerns Regarding the Presence of Sealed Arrests in the CGD

In connection with reviewing the DD5s, OIG-NYPD identified instances, including recent examples, where individuals were reviewed and approved for continued inclusion in the CGD on the basis of recent arrests that appear to be sealed. OIG-NYPD also found sealed arrests referenced in the 'Arrest History' areas of Activation and Renewal DD5s, and in the 'Summary of Investigation' fields. Certain fields in the DD5s, such as Arrest History, automatically pull arrest information from other databases within NYPD's various systems. This can result in sealed arrests being automatically pulled into CGD DD5s and potentially used for CGD-related decisions. New York State law has long prohibited law enforcement use of sealed records, for any purpose, with certain narrow exceptions that do not apply here.[61] Even assuming those exceptions applied – and they do not – the Department is required to obtain a court order to use sealed records.[62] There is no evidence that an order was obtained for that purpose, and thus the use of sealed arrests in the documentation supporting inclusion and renewal in the CGD appears to be unlawful.

The Department maintains that it does not utilize sealed arrests when evaluating an individual for inclusion or renewal in the CGD, however, they do not dispute that sealed arrests appear in the DD5s which support inclusion in the CGD. Further, NYPD noted that activation of an individual into the CGD is very unlikely to be based on a sealed arrest, but did not foreclose the possibility entirely. Furthermore, at least based on the DD5s that the Office reviewed, and which contained references to sealed arrests, there does not appear to be a mechanism to ensure that sealed arrests are not considered at activation or renewal. [63] A recent court decision which held that NYPD is prohibited from using, accessing, or disclosing any sealed records unless it has first obtained a court order, and that NYPD should cease any improper use of

[61] *See*, *e.g.*, *Hynes v. Karassik*, 47 N.Y.2d 659 (N.Y. 1979); *People v. Patterson*, 78 N.Y.2d 711 (N.Y. 1991); *see also Lino v. N.Y.C.*, 101 A.D.3d 552 (1st Dept. 2012) (finding NYPD's inclusion of sealed records in the "stop and frisk" database was sufficient harm to confer standing).
[62] N.Y. Crim. Proc. Law § 160.50(d) (Consol. 2023).
[63] Representatives from NYPD declined to further discuss that issue in light of then-pending litigation; *see R.C. v. City of N.Y.*, 100 N.Y.S.3d 824, 830 (N.Y. Sup. Ct. 2019).

sealed records, may address the issue identified.[64] The court ordered that NYPD should, among other things, implement system-wide changes to prohibit access to sealed arrests within ECMS files.[65]

D. Results of the Purposive Sample Analysis

The office obtained a purposive sample of 19 CGD entries for youth between the ages of 13 and 14 at the time of activation, to consider the bases on which these minors were entered into the database. Of the 19 entries, sixteen individuals had sealed arrests which were referenced within their Activation DD5s. Of the remaining three individuals, two had unsealed arrest records and one had no arrest history.

The findings from this sample set were generally consistent with the findings set out above with respect to the CGD entries for adults. The Office observed that for seven of the 19 entries examined, the same person was listed on the Activation DD5 as both the reviewing officer nominating the juvenile for inclusion and as the supervisor approving that nomination, skirting procedures designed to ensure only legitimate gang members are activated.
Eleven of the 19 juvenile entries were reviewed and were renewed. On average, the reviews, required to take place two years from entry for juveniles, were delayed by 250 days. The longest delay was 490 days, the shortest delay was 5 days. Of the 11 that had been reviewed, 9 were renewed due to police contact—arrests or probationary sentences. One juvenile was renewed due to having an active witness I-CARD, another was in state custody for alleged criminal activity.[66] One individual was deactivated – that person was killed in a shooting the year before.

Eight individuals were not reviewed. Three of them had not yet reached their review date, five were past their review date. Two of the five were activated in 2014, one in 2015 and two in 2018, meaning that they were approximately 6, 5, and 2 years past their required review dates.

The Department has in recent years committed to addressing crime prevention at the community level, specifically the reduction of juvenile involvement in criminal groups, and previously considered (according to NYPD personnel) the creation of a

[64] *R.C. v. N.Y.C.*, 153739/2018 (N.Y. Sup. Ct. 2023) (NY St. Cts. Elec. Filing [NYSCEF] Doc. No. 288).
[65] Id.
[66] An I-CARD is an internal Department marker that identifies an individual as a possible source of information about a crime or other incident of interest, who should be brought in for questioning or crime or to be brought in for questioning.

parental notification process for minors within the CGD.[67] In light of those priorities, and consistent with the practice of certain other jurisdictions, OIG-NYPD has proposed that minors added to the CGD be treated differently than adults, in that their parents or guardians be notified of their CGD status and that they are given an opportunity to request removal after one year, under certain circumstances.

E. Results of the In-Depth DD5 Analysis[68]

The assessment of the 494 and 19 entry sample sets, including their supporting DD5s, yielded significant insight into the factors most commonly used to support activations and renewals into the database, including:

Option A Criteria

A.1-Self Admission

According to the IUP for the CGD, "self-admission" of criminal group involvement can take two forms: social media posts that are deemed self-admission, or acknowledgment of membership in debriefings with police officers. The existence and nature of documentation related to self-admission varied widely. When gang membership was reported directly to members of the force, those admissions were generally memorialized within the Activation DD5s with details including the names of the officers, the dates of the debriefings, and the admissions made. However, in cases where admissions occurred through social media, OIG-NYPD identified several areas of concern:

Absence of Clear Guidance Related to "Self-Admission"

NYPD described Option A.1—self admission, including via social media—as a well-defined criterion. In contrast, OIG-NYPD found that where entry into the CGD was based on this criterion, the descriptions of the social media content in the Activation DD5s, were cursory, conclusory, and failed to include sufficient detail to support the

[67] Among the range of programming options offered or supported by the Department via its Youth Strategies Division to engage with juveniles, strengthen community/police relations and prevent the engagement of the young in criminal activity are the Summer Youth Police Academy, which permits minors between the ages of 10 and 15 years to train with officers over the course of six weeks, the Law Enforcement Explorers program, intended for participation by youths aged 14-20 years, to become familiar with careers in the criminal justice system and the long existent Police Athletic League (PAL), which provides a range of recreational options for the young residents of the New York. For information about those efforts by NYPD, see: https://www.palnyc.org/programs-overview or https://www.nyc.gov/site/nypd/bureaus/administrative/youth-services.page.

[68] Anonymized examples of the documents and other information on which the foregoing analyses are based can be seen in Appendix A.

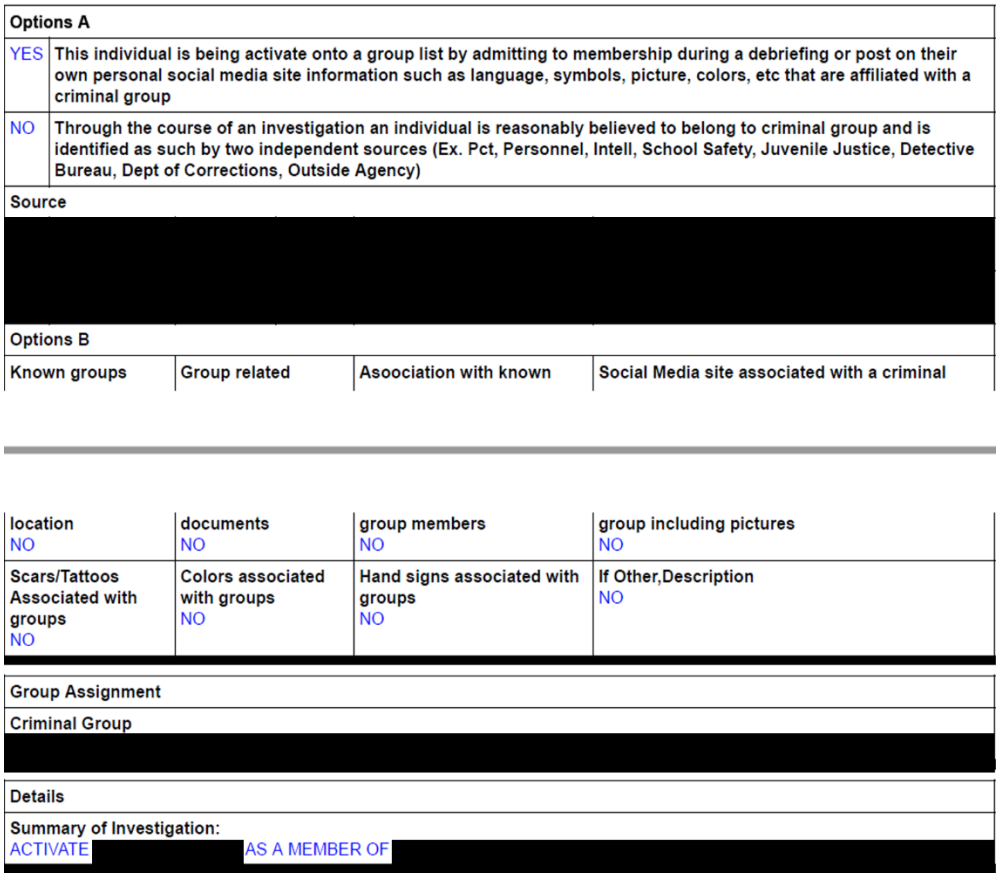
determination that the content qualified as a self-admission of gang affiliation.[69] For example, in a number of instances, certain emojis, alone, or photographs of individuals in the company of known gang members, without more detail, were deemed sufficient to indicate self-admissions. For other entries, the DD5s generally referred to "social media content" as the basis for self-admission, without more information provided.

Lack of Documentation Supporting Self-Admission Inclusion

For a range of entries in which individuals were activated into the database as a result of self-admission via social media, the Activation and Person Maintenance DD5s did not include or attach any documentary evidence to support the finding of self-admission. In some instances, the DD5s included references to social media sites, but often those references were to the entirety of an individual's Facebook, Instagram, or Snapchat account, not to any specific post.

[69] Person Maintenance and Activation DD5s were both examined, and in some instances Person Maintenance and Activation DD5s reflected duplicate narratives under "search tags and phrases" (Person Maintenance DD5) and "summary of investigation" (Activation DD5).

Figure 9: Incomplete Documentation for Activation Under Self-Admission[70]



Options A	
YES	This individual is being activate onto a group list by admitting to membership during a debriefing or post on their own personal social media site information such as language, symbols, picture, colors, etc that are affiliated with a criminal group
NO	Through the course of an investigation an individual is reasonably believed to belong to criminal group and is identified as such by two independent sources (Ex. Pct, Personnel, Intell, School Safety, Juvenile Justice, Detective Bureau, Dept of Corrections, Outside Agency)

Source

[redacted]

Options B			
Known groups	Group related	Asoociation with known	Social Media site associated with a criminal

location NO	documents NO	group members NO	group including pictures NO
Scars/Tattoos Associated with groups NO	Colors associated with groups NO	Hand signs associated with groups NO	If Other,Description NO

Group Assignment

Criminal Group

[redacted]

Details

Summary of Investigation:
ACTIVATE [redacted] AS A MEMBER OF [redacted]

An example of an entry activated because of self-admission, with no documentation or record of how that self-admission was made.

A.2-Two Sources

Option A.2 requires the identification of an individual as a member of a criminal group by "two independent sources." The Activation DD5 form contains a field where the reporting officer can identify the two sources by name. Among the supporting documents assessed for the 494 entries that OIG-NYPD considered, 136 individuals were activated at least in part on that basis. However, the DD5s did not always document the existence of two independent sources. In 10 cases (7.4%), the activation documents did not name any sources, while for 27 entries (19.9%), only one source was named when two sources are required.

[70] The screenshots of the anonymized DD5s included herein were produced from documents provided by NYPD; any typographical, spelling, or other errors are native to the forms.

Figure 10: No Recorded Sources for an Entry Activated Through Option A.2

Options A	
YES	**This individual is being activate onto a group list by admitting to membership during a debriefing or post on their own personal social media site information such as language, symbols, picture, colors, etc that are affiliated with a criminal group**
YES	**Through the course of an investigation an individual is reasonably believed to belong to criminal group and is identified as such by two independent sources (Ex. Pct, Personnel, Intell, School Safety, Juvenile Justice, Detective Bureau, Dept of Corrections, Outside Agency)**
Source	
Options B	

An example of an entry that relies on Option A.2 criteria (two independent sources), but fails to identify the sources.

Option B Criteria

B.1-Known Location

When an individual is activated into the CGD on the basis of factors including the known location criterion, the Person Maintenance DD5 contains a field to document that detail. As explained above, a minimum of two option B criteria are required for inclusion in the CGD. The DD5 provides space for the entry of detailed information including location types, names, descriptions, cross streets and addresses. In many of the DD5s reviewed, there was sufficient information about the "known location", but for a subset, documentation was significantly deficient, including:

- Instances where no locations were described in the DD5s, although known location was, in part, the basis for inclusion
- Overly-broad location descriptions that included entire large precincts as opposed to specific discrete areas
- The designation of NYCHA properties in their entirety as gang locations
- The designation of individuals' home addresses as gang locations
- Frequent references to known locations, with no further information provided in any related field
- Location descriptions, but no specific addresses

Those issues raised questions about the fairness and value of the "gang location" criterion as it is currently defined in the IUP and elsewhere by the Department, and whether, when it is applied, there is in fact a specific location of concern. The use of the location criterion is troubling with respect to minors, particularly when the "known gang location[s]" are their homes. For example, OIG-NYPD examined the DD5s for two different minors in the CGD and found that they were included in part

due to the fact that they frequented known gang locations, which were described in their Person Maintenance DD5s to be the NYCHA properties where they lived. Residing in a certain type of housing, particularly as a minor, whether correlated with the occurrence of criminal activity or not, should not be a basis (even when combined with a second criterion) to conclude that any individual is affiliated with a criminal group.

Given the investigative findings, the Department should refine its understanding of gang locations, particularly with respect to locations that are residential properties, and define clearly when and how the "gang locations" criteria should be used by officers in evaluating individuals, especially minors, for inclusion in the CGD.[71]

B.2-Group Related Documents

When asked to define the material or content that qualified as Group Related documents, NYPD officials gave the example of a notebook with gang iconography on it. In the sample OIG-NPYD reviewed, the DD5s failed to adequately describe and/or document those "group related" documents. For example, one individual allegedly created graffiti that represented "group related documents," but the DD5s did not explain the nature of the graffiti or how it was gang-related. In most instances, the "group documents" were social media content, with similarly insufficient descriptions and/or documentation about why the content supported a claim of gang-affiliation.

B.3-Known Associates

Less than a third of the Activation DD5s that cited Known Associates as a factor for inclusion in the database had sufficient details supporting the determination that the individual in the CGD associated with known gang members. In those DD5s with sufficient detail, the narrative descriptions provided specific information about the nature of individuals' relationships and why they were indicative of gang affiliation. Further, only 30% of the entries identified a specific alleged criminal group member with whom the nominee was allegedly associated, and thus failed to adequately establish that the nominee in fact was associated with a criminal group. In other instances, the DD5s made general references to 'known [gang] members' but failed to explain the connection between the individual in the CGD and any particular criminal group.

The lack of detail supporting inclusion on the basis of the "known associates" criterion appears to be due, in part, to the absence of Department guidance – in the form of

[71] OIG-NYPD found that "Known Location" was third most common criteria used to support the inclusion in the CGD. For 6,402 of the 16,141 individuals in the database or roughly 40% of the time, "known location" was one of the criteria supporting inclusion.

policies or procedures– defining and addressing the nature and extent of the associations required. NYPD stated that the way that the criterion is applied has shifted with changes in the leadership responsible for the CGD, like the other criteria within the Option A and B activation pathways. Those shifts were particularly relevant to criteria related to social media platforms, which have evolved into a major source of information supporting CGD inclusion. During an interview, a representative of NYPD explained that if an individual makes a comment such as 'Happy Birthday' on the Facebook page of a gang member, that could be a basis to conclude that the individual is a "known associate" of a gang member. Furthermore, in reviewing entries activated in part on the basis of "Known Associates," OIG-NYPD observed several occasions in which simply having the status of 'friends' with an alleged gang member on a social media platform like Facebook was sufficient to be deemed a "known associate."

In the absence of guidance and standards concerning the "Known Associates" criterion, Option B.3 has the potential to contribute to an overly inclusive database, based on very limited interactions between individuals who are not in fact gang-affiliated in any meaningful sense, and known gang members. In turn, associates of those newly activated individuals could also be included in the CGD on this basis– as long as one additional criterion is satisfied. For that reason, OIG-NYPD recommends that the criterion be clarified and that specific requirements be met before an individual can be deemed a "known associate" of other purported criminal group members.

Figure 11: Lack of Documentation for Known Location or Known Members

Known groups location YES	**Group related documents** NO	**Asoociation with known group members** YES	**Social Media site associated with a criminal group including pictures** NO
Scars/Tattoos A ociated with groups NO	**Colors associated with group** NO	**Hand signs associated with group** NO	**If Other,Description** NO

Group Assignment
Criminal Group
[redacted]

Details
Summary of Inve tigation 1. On [redacted] at approximately 1110 Hours the undersigned is requesting [redacted] be entered in as a [redacted] gang member 2 For your information

An example of a Maintenance DD5 in which known association and known locations are the bases for CGD inclusion, with no documentation or detail supporting those determinations.

B.4-Social Media

Social media is itself a factor that is a basis for inclusion in the CGD, and social media also can be the source of information about other bases for inclusion, such as associations, known locations, and documents. The fact that conduct is captured and posted to social media may support inclusion even though the conduct itself may not—for example, if an individual is observed flashing a gang-related hand sign in public, that is likely insufficient for inclusion. But if that same individual posts a photo on social media flashing that hand sign, that image could satisfy both the "hand sign" and the "social media" criteria for inclusion.

More importantly, on a number of occasions, the DD5s OIG-NYPD reviewed provided only vague narrative descriptions of the content of social media posts without making clear how those posts indicated criminal group affiliation. Not only do those narratives fail to establish clearly the basis for inclusion (raising the possibility that individuals are included without sufficient basis), the vague narratives also limit the value of the multilevel review process, because the reviewer cannot meaningfully evaluate the basis for inclusion with the information provided.

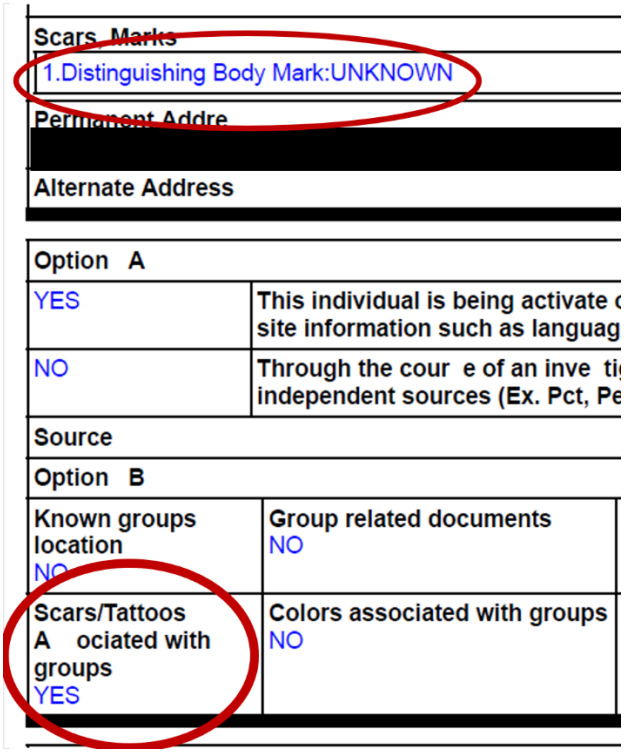
To ensure that when social media is used as a basis for inclusion, there is a sufficient basis to conclude that social media content in fact reflects gang affiliation, NYPD should require more specific narrative descriptions in the DD5s, and should provide clear guidance with respect to how officers should determine whether the Option A and Option B criteria are satisfied.

B.5-Scars/Tattoos Associated with Group

The relevant DD5s for Activation, Person Maintenance, and Renewal, provide space for a description of identifying marks like tattoos or scars deemed to reflect gang affiliation.

OIG-NYPD observed in its review of the 494 entries that, in the majority of circumstances, the DD5s did not describe those markings at all and/or stated "unknown" in the description field. To the extent that individuals are added to the CGD in part on this basis, the distinguishing marks should be clearly described, as well as the basis to believe that the marks are indicative of gang affiliation.

Figure 12: Lack of Documentation for Scars/Tattoos Used to Activate Individual



An example of a DD5 basing CGD inclusion in part on Scars/Tattoos Associated with Groups, but referencing the mark as "unknown."

B.6 and B.7-Colors and Hand Signs Associated with Groups

The two criteria were used infrequently and OIG-NYPD found that when used, those criteria generally were sufficiently documented on the DD5s.

B.8-Other

Department officials explained to OIG-NYPD that an "other" catchall criterion is necessary based on their experiences with investigative and other databases. Based on the sample reviewed, the criterion was used when officers rely on indicators such as "Facebook Photos," "Emojis," "CI Intel," "Related Language," and "social media." Since those indicators are in fact captured within Options A and B, the "Other" category seems unnecessary. The existence of the category also creates a risk that individuals will be included on an insufficient basis, and therefore should be used very sparingly, if at all

Figure 13: Risks of Use of "Other" Category

Known groups location NO	**Group related documents** NO	**Asoociation with known group members** NO	**Social Media site associated with a criminal group including pictures** YES
Scars/Tattoos Associated with groups NO	**Colors associated with groups** NO	**Hand signs associated with groups** NO	**If Other,Description** YES -Social Media posts

An example of an individual activated under Option B.4 Social Media AND Option B.8 Other - Social Media. It is possible that this individual should not have been included, and that this category was used to admit the individual on an insufficient basis.

VII. The Uses of the CGD

NYPD has noted publicly and in conversations with OIG-NYPD that the database plays a critical role in its crime reduction efforts, specifically in the prevention and mitigation of violent offenses, identification of social media threats, and the investigation of shootings connected to criminal groups. While individual patrol officers, FIOs and precinct detectives have the most detailed and current intelligence about gang dynamics/relations, and are heavily relied upon in NYPD's efforts to investigate and prevent illegal activity, the CGD augments that work. It serves as a means to preserve and centralize gang affiliation information that would otherwise be dispersed throughout the Department at the local level, so that the information is available to authorized personnel Department-wide and so that it is retained when officers retire or transfer to a different command.

A. Use by patrol officers

As noted above, patrol officers gain awareness about gang memberships and activity, including rivalries among groups, from a variety of sources. However, gang affiliation, which is a specific data point available through DAS and originating in the CGD, is necessary for situational awareness.

Patrol officers gain access to limited data from the CGD as one of many results obtained from DAS queries which generate background information on individuals who have been stopped or arrested (see Figure 1, infra, as an example). Those results may inform officers about individuals' biographical details, such as dates of birth, past law enforcement histories including prior arrests, open warrants or which criminal groups they are affiliated with. According to NYPD, details regarding gang affiliation, "can also inform an Officer as to the person's motive, dangerousness, or potential involvement in nearby incidents."[72] For example, in a situation where criminal group A and criminal group B are rivals and there is an escalation in gun violence, knowing that the victim is a member of group A, enables patrol forces to increase in certain areas to get ahead of any potential retaliatory violence.

Furthermore, in addition to the work of the Department's patrol officers, NYPD stated in multiple interviews and a subsequent written statement provided to OIG-NYPD, that gang affiliation information, as maintained in the CGD, is at the heart of its mission of ensuring public and officer safety and that its charge to manage public security is supported by possession of that information.

[72] Letter from N.Y.C. Police Dep't to Off. of the Inspector Gen. for the NYPD (Sept. 19, 2022) (on file with agency).

It is imperative, then, that the CGD information be reviewed and updated with greater frequency than is the current practice, as gang affiliations and membership statuses can change quickly, particularly relative to the pace at which the database entries are currently analyzed. There is a risk that the database's information may become outdated and not fully capture the intelligence held by members of the Department at the local level given that gang affiliations, locations, and conduct change frequently.

B. Prosecutors' use of CGD

The prosecutors interviewed by OIG-NYPD indicated that the CGD is of limited use to them in their work.[73] Several offices pointed out that because gang membership is not criminal in New York State, affiliation alone cannot be the basis for a charge. Furthermore, inclusion in the CGD is not itself admissible evidence. Criminal group affiliation can help to establish a motive for a crime; for example, an argument that a suspect was motivated to commit a felony assault because of existing group conflict can be supported by information concerning the criminal group affiliation of the suspect and the victim. But that affiliation must be proven with admissible evidence to be usable at trial, mere presence in the CGD (which, as noted, is not admissible), is insufficient. Prosecutors can obtain affiliation-related information from various NYPD resources that include details from the CGD (e.g., DAS search results), or directly from the local patrol units, field intelligence officers, and detectives with whom they work.

Several prosecutors' offices stated that they generally obtain group affiliation information from their own internal intelligence gathering, and not from NYPD. Certain prosecutors' offices maintain their own independent information concerning group affiliations and use that data to support their investigations. Prosecutors do not have direct access to the CGD, but some expressed doubts about whether the CGD's affiliation information is current, and noted that they would in all cases seek to verify any gang affiliation reflected in the CGD before relying on it in a criminal case.

C. External entities' Use of the CGD

NYPD policy prohibits sharing CGD information with the New York City Housing Authority (NYCHA), Immigration and Customs Enforcement (ICE) or private employers conducting background checks. The IUP provides that "[o]ther law enforcement agencies may request information contained in NYPD Criminal Group

[73] OIG-NYPD conferred with representatives from the District Attorney's Offices in the Bronx, Queens and Staten Island as well as a taskforce with member prosecutors from all five boroughs.

Database from NYPD in accordance with applicable laws, regulations, and New York City and NYPD policies."[74] NYPD may share that information, in accordance with applicable laws and regulations, with partner law enforcement and City agencies in connection with on-going criminal investigations, civil litigation and disciplinary proceedings. NYPD may share CGD information with prosecutors where the prosecutor has jurisdiction over the matter.

As an initial matter, it is critical to note that NYPD had represented to the Office via written correspondence that no outside agency has requested, or received, disclosures of CGD-related information as far as the Department is aware. However, the database does not represent NYPD's only source of information regarding gang affiliation and CGD restrictions do not apply to other NYPD sources of gang information, which could be shared outside of the Department, if such sharing is otherwise consistent with Department policy.

D. Other Potential Uses

Advocacy groups have, on occasion, expressed concerns that the information within the CGD might be used in connection with NYPD's Operation Ceasefire initiative, which seeks to reduce gun violence. That program involves the identification of individuals at risk of involvement in firearms-related offenses and the application of preemptive strategies to mitigate the risk of those offenses, with the assistance of the public, local police, prosecutors, community members and support service providers, who seek to convey the related hazards and effects of such acts.[75] Operation Ceasefire focuses on individuals believed to be associated with criminal groups, but the CGD is not used to identify them or to include them within the program. Individuals are included in Operation Ceasefire on the basis of local knowledge of patrol units, FIOs and other command level officers concerning criminal group affiliation.

[74] See the full IUP in Appendix B for more detail.
[75] Details regarding Operation Ceasefire were referenced on the Department's website, in a section dedicated to the collaborative policing approaches used by the agency. *Deputy Commissioner Collaborative Policing*, N.Y.C. POLICE DEP'T, https://www.nyc.gov/site/nypd/bureaus/administrative/collaborative-policing.page#:~:text=NYC%20Ceasefire%20aims,needs%2C%20and%20counseling (last visited Apr. 16, 2023).

VIII. Risks of Maintenance and Use of the CGD

A. Outdated Information

Since the data within the CGD is reviewed only after two and three-year intervals, entries can be removed only after they are reviewed, and reviews are often delayed, there is a risk that at least some of the affiliation information in the CGD is out of date. As noted in academic literature and by the Department during interviews, criminal group affiliations change frequently.[76] Therefore review of the CGD entries should occur more often than NYPD currently requires, and should occur on time. More frequent reviews will help to ensure the accuracy of the CGD information and thus, its value to the Department. The risk of outdated information has been identified by researchers as a key flaw in centralized gang databases.[77]

B. Data Breach

As mentioned earlier in the Report, the Department clarified during interviews with OIG-NYPD that no entries are ever permanently removed from the CGD. Instead, the database information for deactivated individuals does not surface in response to DAS searches.[78] If NYPD decides to reactivate an individual who was previously included in the CGD, their deactivated entry is not used to support that reinclusion. The standard activation process has to be applied. It is unclear, then, what purpose is served by maintaining inactive entry data indefinitely.

Retaining deactivated individuals and their information in the CGD can increase the potential for harm from data breaches, without apparent benefit. Recent instances of hacking of computer systems of the Metropolitan Police Department of Washington, D.C., the New York City Law Department, as well as police departments in Maine, New Jersey, and California, reflect that any data system is at risk, and that detailed information about individuals in the CGD—as well as NYPD's conclusions with respect to their gang-affiliation—could be exposed in a data breach.[79] While that risk

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[76] David Starbuck et al., *Hybrid and Other Modern Gangs*, OJJDP JUVENILE JUST. BULL., Dec. 2001, at 1, https://nationalgangcenter.ojp.gov/sites/g/files/xyckuh331/files/media/document/hybrid-and-other-modern-gangs.pdf.

[77] Julia Burrows & C. Ronald Huff, *Gangs and Public Policy*, 8(4) CRIMINOLOGY & PUB. POL'Y 667, 675 (Nov. 2009).

[78] In its Impact and Use policy for the CGD, NYPD clarified that, "Once a subject is removed from the database, the fact that they once were affiliated with a criminal group is permanently hidden from the database and NYPD computer systems."

[79] *See*, *e.g.*, Nicole Perlroth & Julian E. Barnes, *D.C. Police Department Data is Leaked in a Cyberattack*, THE N.Y. TIMES (Apr. 27, 2021), https://www.nytimes.com/2021/04/27/us/dc-police-hack.html; Ashley Southall, Benjamin Weiser & Dana Rubinstein, *How New York City's Law*

exists for active information, maintaining inactive entries within the database serves little to no law enforcement purpose, because deactivated individuals are deemed to no longer be criminal group affiliated. Since that information is nonetheless maintained, NYPD should take steps to guard against the risk of a breach.

C. Reputation/Public Trust

Public attention surrounding NYPD's use of the CGD has largely been negative, with media articles, protests, and proposed legislation calling on NYPD to eliminate the CGD. Much of that attention has focused on the races and ages of the individuals included in the database, as the overwhelming majority of individuals who are included are young Black and Hispanic males.

OIG-NYPD heard public concerns that the racial/ethnic composition of individuals in the CGD indicated a racial disparity and raised questions about bias. Advocacy and community groups have asserted that bias could originate from entry criteria, populations targeted for inclusion, or the subjective judgments made by NYPD personnel in the selection of particular individuals for inclusion. [80] Community groups take the position that the use of the CGD is unconstitutional race-driven policing, consistent with the historical misuse of "Stop and Frisk" by members of the force, and further indication of a culture of racism within NYPD.

NYPD takes the position that the CGD, the only centralized dataset of criminal groups that the agency maintains, is specifically focused on violent "street gangs." The Department produced statistics indicating that the majority of perpetrators and victims of violent street crime in New York City are Black or Hispanic and is of the

Department Got Hacked, THE N.Y. TIMES (Jun. 18, 2021), https://www.nytimes.com/2021/06/18/nyregion/nyc-law-department-hack.html; Kathleen Phalin Tomaselli, *Hackers Dump Presque Isle Police Department Files on Dark Web*, BANGOR DAILY NEWS (Jun. 10, 2021), https://bangordailynews.com/2021/06/10/news/aroostook/hackers-dump-presque-isle-police-department-files-on-dark-web/; Phillip DeVencentis, *Haledon Police Computer Breach of Untold Magnitude Affects Private Citizens*, NORTHJERSEY.COM (Aug. 20, 2021), https://www.northjersey.com/story/news/passaic/haledon/2021/08/20/haledon-nj-police-department-cyberattack-raises-identity-theft-alert/8193082002/; Harriet Ryan, *Ransomware Hack Puts Sensitive Azusa Police Documents Online*, L.A. TIMES (May 31, 2021, 6:33 PM PT), https://www.latimes.com/california/story/2021-05-31/azusa-ransomware-hack-sensitive-police-documents-online; Micah Lee, *Hack of 251 Law Enforcement Websites Exposes Personal Data of 700,000 Cops*, THE INTERCEPT (Jul. 15, 2020, 11:00 AM), https://theintercept.com/2020/07/15/blueleaks-anonymous-ddos-law-enforcement-hack/.

[80] *See*, *e.g.*, Marie Pryor, Kim Shayo Buchanan, & Phillip Atiba Goff, *Risky Situations: Sources of Racial Disparity in Police Behavior*, 16 ANN. REV. OF L. AND SOC. SCI. 343, 347 (2020).

view that the CGD targets those crimes, not particular categories of individuals.[81] The Department should further substantiate that claim and the value of the database to its crime prevention and public safety activities by making additional public statements about the database as recommended herein. By further explaining to the public how the CGD is populated and the law enforcement need for maintaining it, NYPD would provide transparency around its intended purposes and the public safety benefits of its use.

[81] N.Y.C. POLICE DEP'T, CRIME AND ENFORCEMENT ACTIVITY IN NEW YORK CITY (JAN. 1-DEC. 31, 2020), https://www.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2020-enforcement-report-20210721.pdf.

IX. Costs of Maintenance and Use of the CGD

A. Administrative

Maintaining the CGD requires additional NYPD resources. The process of entry, review, and removal includes: completion of DD5 forms; review of the DD5s for activation and removal of entries by the designated detective, supervisory review of activation decisions and occasional consultation with respect to renewal and removal determinations, as well as technical support for the database.

With over 16,000 entries currently active in the CGD, reviewing that data for removal on a consistent basis is a heavy administrative task currently handled principally by one detective, with some input by their supervisor. As noted above, that burden has likely led to delays in the review process. It is clear from the process outlined in interviews with the Department that there is a significant volume of entries to consider annually and that the evaluation process requires significant time and resources. Additional resources are required to ensure timely review of those entries, as set forth in detail above.

B. Potential Civil Liability

The CGD consists of a majority Black and/or Hispanic individuals, a circumstance that exposes the City to potential legal challenges and has prompted numerous FOIL requests. Although NYPD has asserted that its policies related to the CGD are race-neutral, as noted above, the fact that the CGD consists almost entirely of individuals who are Black and/or Hispanic may prompt legal challenges.[82] To date legal challenges have largely been limited to the Department's handling of CGD-related FOIL requests, but a challenge to the existence of the database remains a risk; such challenges have been brought, though without much success, in other jurisdictions. Even if unsuccessful, such a lawsuit could be costly for the City to defend—especially if such a lawsuit proceeds to the discovery phase.

Organizations such as the Legal Aid Society have alleged that inclusion in the CGD causes harmful effects; advocates have also argued that the CGD is an extension of NYPD's unconstitutional use of "Stop, Question, and Frisk" tactics.[83] While OIG-NYPD did not find evidence of adverse effects of inclusion in its review of the CGD,

[82] *Floyd v City of N.Y.*, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013).
[83] Jake Offenhartz, *The NYPD's Expanding Gang Database is Latest Form of Stop and Frisk, Advocates Say*, GOTHAMIST (Jun. 13, 2018), https://gothamist.com/news/the-nypds-expanding-gang-database-is-latest-form-of-stop-frisk-advocates-say.

and NYPD has explained that the CGD is not an extension of Stop, Question, and Frisk, a legal challenge could be brought on that basis.

Despite OIG-NYPD's findings, individuals have alleged that the CGD has caused them harm. One such claim was brought in 2018 by an individual alleging negative employment consequences. The lawsuit alleged, *inter alia*, violations of their rights under the First, Fourth, and Fourteenth Amendments.[84] The lawsuit was dismissed in favor of the City in November 2021, but three years and significant resources were likely expended by the City to defend the claim.

Finally, litigants have challenged NYPD's denial of FOIL requests for CGD inclusion. There is a cost to defending those suits, and seven such lawsuits have settled since 2019 and the City was required to pay out a total of $100,500.[85] NYPD's changes to its FOIL practice should mitigate, if not avoid entirely, further FOIL-related litigation.

[84] *See generally Rodriguez v. City of N.Y.*, 2021 U.S. Dist. LEXIS 222062 (S.D.N.Y. Nov. 16, 2021). Notably, when the City produced the plaintiff's CGD report in support of its motion to dismiss, the report indicated the plaintiff "self-admitted" gang membership and was included in the CGD based solely on the plaintiff's social media posts.

[85] *See* Stipulation of Settlement and Discontinuance, *McGriff v. NYPD*, 157400/2022 (N.Y. Sup. Ct. 2022); *J.F. v. NYPD*, 452565/2022 (N.Y. Sup. Ct. 2022); *Peele on behalf of minor child, D.B., v. NYPD, et al.*, 153099/2022 (N.Y. Sup. Ct. 2022); *Smith, et. al v. N.Y.C., et. al*, 034558/2020E (N.Y. Sup. Ct. 2022); Stipulation of Settlement, *M Safety LLC v. NYPD*, 153580/2020 (N.Y. Sup. Ct. 2020; Stipulation of Settlement and Discontinuance, *Shenery v. NYPD*, 160935/2018 (N.Y. Sup. Ct. 2020); Stipulation of Settlement and Discontinuance*, NAACP Legal Def. & Educ. Fund, Inc. v. NYPD*, 157383/2018 (N.Y. Sup. Ct. 2019).

X. Conclusion: Summary of Key Findings and Recommendations

OIG-NYPD's investigation determined that:

1. Evidence of harm from the CGD was not found.

Although members of the public, including via means like advocacy organizations, have expressed concerns about the potential harms associated with inclusion in the CGD, the Office was not able to find evidence that inclusion in the database has caused harm to any individual or group of individuals. That may be because inclusion in the CGD does not, in fact, cause harm. It may be, in part, because gang affiliation information exists in other forms and systems across NYPD, not only in the database, thus any harm that may arise from being labeled gang-affiliated by the Department is not attributable directly, or solely, to the CGD. Additionally, harm may not be readily determined, since the Department has historically not notified individuals in the database of their inclusion; were that information known to those individuals they might be able to more readily assess whether inclusion has caused harm and potentially raise concerns about their presence in the database.

The investigation did not identify a relationship between inclusion in the CGD and any individual adverse outcomes. However, OIG-NYPD found, largely based on discussions with advocacy groups, that there is fear and uncertainty in certain communities in New York City about CGD inclusion and its consequences, and that fear decreases confidence in the Department and strains police-community relations

2. Historically, members of the public generally have been unable to determine whether or not they are included in the CGD.

NYPD routinely denied Freedom of Information Law ("FOIL") requests, as well as administrative appeals of those denials, made by members of the public. The Department disclosed CGD-related information only in response to Article 78 litigation brought by individuals seeking information about their CGD status, following NYPD's denials of FOIL requests and administrative appeals. The Department told OIG-NYPD that in the late fall of 2022 it modified its approach to FOIL requests seeking such information, and that the change will likely result in more extensive disclosure of CGD-related information. However, the new approach is not codified in formal Department policy and disclosure remains largely within NYPD's discretion. That new approach was adopted in part to avoid further unnecessary Article 78 litigation and in light

of the outcomes in, and in particular disclosures made in, those proceedings. If NYPD adheres to that new approach, future FOIL requests are likely to yield information about whether or not an individual is in the CGD.

3. **The CGD IUP does not provide sufficient detail about the activation process, data sharing with third parties or about the CGD's role in NYPD's anti-crime efforts.**

The IUP does not identify by name the outside agencies that may be granted access to CGD information. The POST Act, which governs NYPD's disclosures in this area, does not require that the Department name those agencies, but it is OIG-NYPD's position that NYPD should release such information to address public concerns about this issue, consistent with the spirit of the POST Act. In addition, the IUP provides limited details about how individuals are added to the database, it does not explain the basis for the entry criteria or how individuals are evaluated against those criteria. Finally, the IUP does not specify how the database enhances NYPD's public safety and anti-crime efforts.

4. **The CGD's gang affiliation information is widely available throughout NYPD.**

Only a single small unit in the Detective Bureau's Special Investigations Division is authorized to deactivate and activate individuals into the CGD, and has access to the entirety of the detailed information contained therein. Approximately 10,000 of NYPD's estimated 33,000 uniformed officers are able to view the information contained on the activation, renewal, or deactivation DD5s for each individual in the CGD, which is accessible via the Enterprise Case Management System (ECMS). All uniformed members of service have access to the Domain Awareness System (DAS), an investigative search function within ECMS. Those officers can search an individual, by name, via DAS and the search function will generate information from a number of sources, including the CGD. DAS search results for a specific individual will identify the names of the criminal group (if any) with which the individual is allegedly affiliated.

5. **Option A allows an individual to be added to the gang database on the basis of more limited evidence than Option B.**

When activation is based on social media, Option A allows entries to be added to the database on the basis of more limited evidence of gang affiliation than Option B. This is because Option A, part 1, allows activation based on a post

on an individual's own social media account that qualifies as "self-admission" of affiliation. Self-admission, in turn, has been based on any one of the following: an individual's use of language, symbols, pictures, or colors associated with a criminal group, posted on their own social media account. Option B, on the other hand, requires at least two indicia of gang affiliation.

6. **NYPD does not provide sufficient guidance for entry criteria use.**

NYPD does not provide guidance to officers responsible for nominating and activating individuals as to the amount or nature of evidence required to establish that the criteria for activation are met.

7. **In at least some cases, NYPD may not be strictly following its own procedural requirements for the nomination and activation of individuals into the CGD.**

Until relatively recently (the exact dates are unclear), NYPD required four levels of approval to include an individual in the CGD. A reporting officer's proposal to include an individual was reviewed by their supervisor (Level 1), a more senior supervisor, termed an "endorser" (Level 2), the detective responsible for activating individuals into the CGD (Level 3), and that detective's supervisor (Level 4). Based on OIG-NYPD's analysis of a sample of 494 CGD entries for the 2018-2022 period (discussed in detail herein), NYPD followed that review process for the majority of entries in the sample. However, in approximately 10% of the entries, for both adults and minors, OIG-NYPD found that NYPD's documentation reflected that the same individuals served in multiple roles throughout the nomination process. That is, in some instances, a single individual served as the reporting officer, reviewing supervisor and endorser, or as both the reviewing supervisor and endorser.

8. **NYPD requires review of CGD entries, but lacks an enforcement mechanism to ensure that all entries are reviewed within the specified time period.**

NYPD policy, as outlined in the IUP for the CGD, requires the assessment of database entries every three years for those older than 18 and every two years for those younger than 18. The entries are flagged for review via an automated process, but there is no mechanism that ensures that the reviews are actually conducted on schedule by NYPD staff. Of the sample of 494 individuals activated into the database from 2018 through late 2022 that OIG-NYPD evaluated, 179 (36.2%) should have been reviewed per NYPD policy by the time

of the evaluation, but had not been. Of those 179 entries, 141 were adults and 38 were minors. For the individuals whose reviews were completed, evidenced by the review forms (211 of the 494 sample), the evaluations for 193 individuals did not occur on a timely basis, inconsistent with NYPD's requirements. Only 18 of the 211 were evaluated by the required deadlines. The average delay for the review of entries in the sample was 69.1 days, 28.9 days for adults and 188.9 for minors.

9. **NYPD's design and use of the CGD is similar to that of other major jurisdictions.**

Other law enforcement entities nationwide employ gang databases, and their inclusion criteria and applicable policies and procedures for the use of their databases are similar to NYPD's. Gang databases in those jurisdictions have been subject to legal challenges, but no court has found the databases to be unlawful to date.

10. **In certain jurisdictions, parents are notified of minor children's inclusion in databases and have a right to appeal.**

In certain jurisdictions, parents are notified when their minor children are added to a gang database, and have the right to appeal their inclusion. OIG-NYPD examined the gang database policies and practices from departments across the United States and found that two jurisdictions and many of the cities in the state of California inform parents and juveniles if the juvenile is added to a gang database, and provide a right to appeal. (Details of that analysis are in Appendix D of the report). Certain state statutes recognize the unique status of juveniles in the criminal justice system, like the California Penal Code, which requires that individuals be 13 years of age or older to be included in the CalGang database. Further, the California Penal Code requires that notifications be delivered to minors and at least one parent or guardian before they are activated into the CalGang Database.[86] The minor and their parent/guardian must be given evidence supporting the minor's inclusion in the database as part of the notification process, and inclusion can be appealed immediately thereafter. The law enforcement agency must make a decision within 60 days after an appeal is filed, after considering information provided

[86] *See* California Penal Code and the "OAL Register Z-2019-0430-06 Final Regulations Text, California Code of Regulations, Title 11, Division 1," available at: https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/reg-ch7.5-calgang-db.pdf and https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=7.&part=1.&chapter=11.&article.

by the minor and their parent, guardian, or legal counsel outlining why inclusion is not appropriate.[87] NYPD, however, does not inform minors or their parents of their activations into the CGD, and does not have an appeals process. The Department has in recent years committed to addressing crime prevention at the community level, specifically the reduction of juvenile involvement in criminal groups, and previously considered (according to NYPD personnel) the creation of a parental notification process for minors within the CGD.

11. Officers were found to lack guidance regarding the bases for entry renewals and some types of renewal documentation were insufficiently supported.

NYPD policy permits certain kinds of police contact to be a basis for continued inclusion (or "renewal") in the database following a review. The investigation revealed several flaws in this process. First, NYPD policy does not provide written guidance as to the forms of police contact that are a sufficient basis for renewal. Second, the documentation supporting renewal for reasons other than police contact was found to be insufficient. Finally, OIG-NYPD identified a number of examples of minors who were renewed without qualifying police contact, because their entries were less than three years old. That finding was incorporated with NYPD's requirement that the status of all minors in the database be reviewed at two-year intervals after inclusion.

12. There are costs to the maintenance and use of the CGD.

The database, which is comprised of thousands of entries, requires regular review and updating, a substantial commitment of NYPD resources.

13. Many key policies and practices relating to the CGD were not memorialized in writing.

NYPD does not appear to have memorialized in written policies and procedures significant aspects of its practices with respect to the CGD. For example, there is no written guidance with respect to the level of detail and documentation required to establish that an individual meets the entry criteria, or how officers should evaluate, at the review period, whether an individual should remain in the database. The absence of such guidance likely contributed to the examples of insufficient documentation to support inclusion and renewal that OIG-

[87] *See* "The CalGang Criminal Intelligence System, Report 2015-130, published in August 2016 at: https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf.

NYPD observed. Clear, written policies will ensure that NYPD follows consistent practices with respect to the CGD, and that determinations concerning inclusion and renewal are supported, documented, and reviewable.

14. **Some individuals were renewed in the CGD on the basis of recent arrests that appear to be sealed.**

New York State law has long prohibited law enforcement use of sealed records, for any purpose, with certain narrow exceptions that do not apply here. Nonetheless, some individuals were renewed into the database due to recent arrests that appeared to be sealed.

Based on those and other findings, OIG-NYPD makes the following recommendations:

Increased Public Awareness About the CGD

1. Within 180 days, NYPD should publish a statement on its website describing how the CGD contributes to the Department's public safety and violent crime reduction strategies. The statement should provide more detail than what is contained in the publicly available IUP and it should describe how the information in the database supports the Department's efforts to combat violent crime as well as its effectiveness as a tool of crime prevention.

2. Within 180 days, NYPD should revise the IUP for the CGD to describe the activation, renewal, and deactivation processes, explain the nature and extent of the evidence required to satisfy the entry criteria, and identify by name the law enforcement and other external entities with whom NYPD may share information about the individuals included in the CGD, for investigative or other purposes. The document should also describe the security protections that prevent unauthorized parties, within or outside of NYPD, from accessing the CGD.

Activation, Renewal, and Deactivation

3. NYPD should require a multilevel review process for the activation, renewal, and deactivation of all entries in the CGD, to be supported by the signature of each reviewer where required. That process should be memorialized in writing.

4. NYPD should provide written guidance to officers explaining how to apply the Option A and B entry criteria, including examples of the type and extent of evidence that is sufficient for activation.

5. NYPD should provide written guidance about how to complete the Person Maintenance, Activation, and Renewal DD5s for the maintenance and entry of individuals into the CGD and should include a requirement that available documentation be attached to the DD5s to substantiate that entry criteria are satisfied.

6. NYPD should create a list of police encounters and arrest types that constitute "qualifying police contact," for purposes of renewal determinations, to be used by officers responsible for deciding whether to renew or deactivate individuals from the CGD.

7. Within 180 days, NYPD should begin a review of each entry in the CGD to determine whether inclusion is still warranted. That analysis should be completed by the Department within one year after the publication of this Report.

8. NYPD should require, by written policy, the review of all CGD entries every twelve months for minors and every eighteen months for adults.

9. NYPD should make inaccessible via DAS and other search methods all CGD entries that are not evaluated within 60 days of review deadlines, until those entries are reviewed.

Minors

10. NYPD should require and convene a special review panel of Department personnel to approve the activation of minors into the CGD, documented by the signature of the chair of the group.

11. NYPD should notify parents or guardians of minors that their children have been activated into the CGD within 60 days of activation unless notification would interfere with active criminal investigations.

12. NYPD should create a process for minors and their parents to appeal their inclusions in the database if the minors have no contact with law enforcement over a twelve-month period.

Sealed Arrests

13. NYPD should ensure that officers completing Person Maintenance, Activation, and Renewal forms do not have access to sealed arrest information for those purposes, including, but not limited to, ensuring that DD5 forms used for those purposes do not autofill with sealed arrest information unless explicitly authorized by law.

14. NYPD should not consider sealed arrests when making CGD activation and renewal determinations.

Staffing

15. NYPD should increase the number of staffers assigned to support the administration of the CGD.

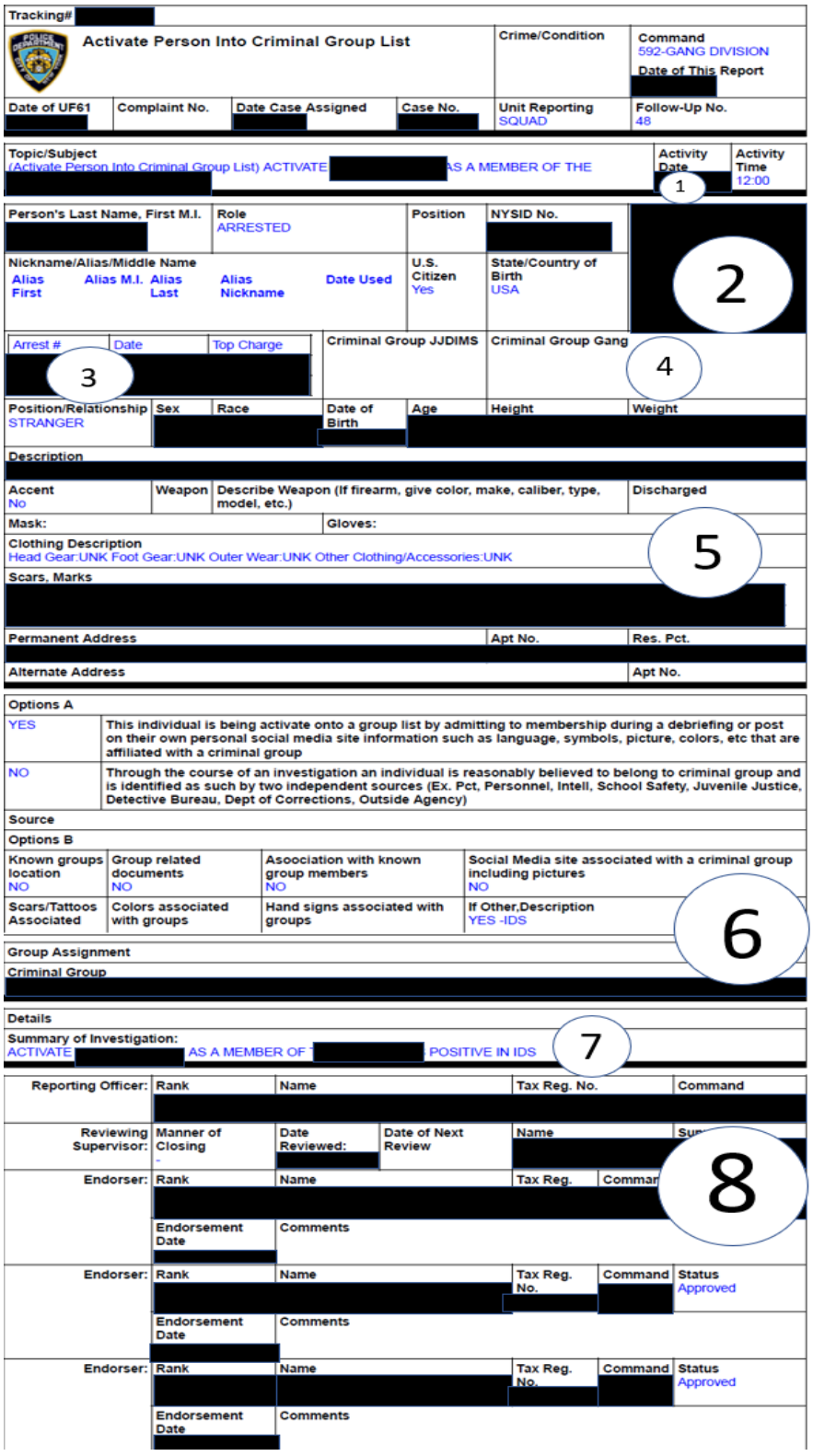
FOIL Requests for Information Related to the CGD

16. NYPD should create a written policy formalizing its intention, after an individualized assessment, to generally grant FOIL requests by individuals with respect to whether they are in the CGD, by providing them with redacted versions of any relevant supporting documents if they are in the database, and by informing them that there are no relevant documents, if they are not.

Ongoing OIG-NYPD Auditing of the CGD

17. Annually, as requested, NYPD should provide a random sample (including minors) of all Activation, Renewal, and Deactivation DD5s and any support documentation to OIG-NYPD for review.

XI. Appendix A-Redacted Versions of the Activation, Person Maintenance, and Renewal DD5 Documents



Tracking# [redacted]

Activate Person Into Criminal Group List

Crime/Condition	Command: 592-GANG DIVISION; Date of This Report: [redacted]

Date of UF61	Complaint No.	Date Case Assigned	Case No.	Unit Reporting	Follow-Up No.
[redacted]		[redacted]	[redacted]	SQUAD	48

Topic/Subject: (Activate Person Into Criminal Group List) ACTIVATE [redacted] AS A MEMBER OF THE [redacted] — Activity Date: [redacted] (1) — Activity Time: 12:00

Person's Last Name, First M.I.	Role	Position	NYSID No.
[redacted]	ARRESTED		[redacted]

Nickname/Alias/Middle Name: Alias First	Alias M.I.	Alias Last	Alias Nickname	Date Used	U.S. Citizen	State/Country of Birth
					Yes	USA

(2) [redacted]

Arrest #	Date	Top Charge	Criminal Group JJDIMS	Criminal Group Gang
(3) [redacted]				(4)

Position/Relationship	Sex	Race	Date of Birth	Age	Height	Weight
STRANGER	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]

Description: [redacted]

Accent	Weapon	Describe Weapon (If firearm, give color, make, caliber, type, model, etc.)	Discharged
No			

Mask: — Gloves:

Clothing Description: Head Gear:UNK Foot Gear:UNK Outer Wear:UNK Other Clothing/Accessories:UNK

(5)

Scars, Marks: [redacted]

Permanent Address	Apt No.	Res. Pct.
[redacted]		

Alternate Address	Apt No.

Options A

YES	This individual is being activate onto a group list by admitting to membership during a debriefing or post on their own personal social media site information such as language, symbols, picture, colors, etc that are affiliated with a criminal group
NO	Through the course of an investigation an individual is reasonably believed to belong to criminal group and is identified as such by two independent sources (Ex. Pct, Personnel, Intell, School Safety, Juvenile Justice, Detective Bureau, Dept of Corrections, Outside Agency)

Source

Options B

Known groups location	Group related documents	Asoociation with known group members	Social Media site associated with a criminal group including pictures
NO	NO	NO	NO

Scars/Tattoos Associated	Colors associated with groups	Hand signs associated with groups	If Other,Description
			YES -IDS

(6)

Group Assignment

Criminal Group: [redacted]

Details

Summary of Investigation: ACTIVATE [redacted] AS A MEMBER OF [redacted] POSITIVE IN IDS (7)

Reporting Officer:	Rank	Name	Tax Reg. No.	Command
	[redacted]			

Reviewing Supervisor:	Manner of Closing	Date Reviewed:	Date of Next Review	Name	Su
	-	[redacted]		[redacted]	

Endorser:	Rank	Name	Tax Reg.	Comma
	[redacted]			

Endorsement Date	Comments
[redacted]	

(8)

Endorser:	Rank	Name	Tax Reg. No.	Command	Status
	[redacted]				Approved

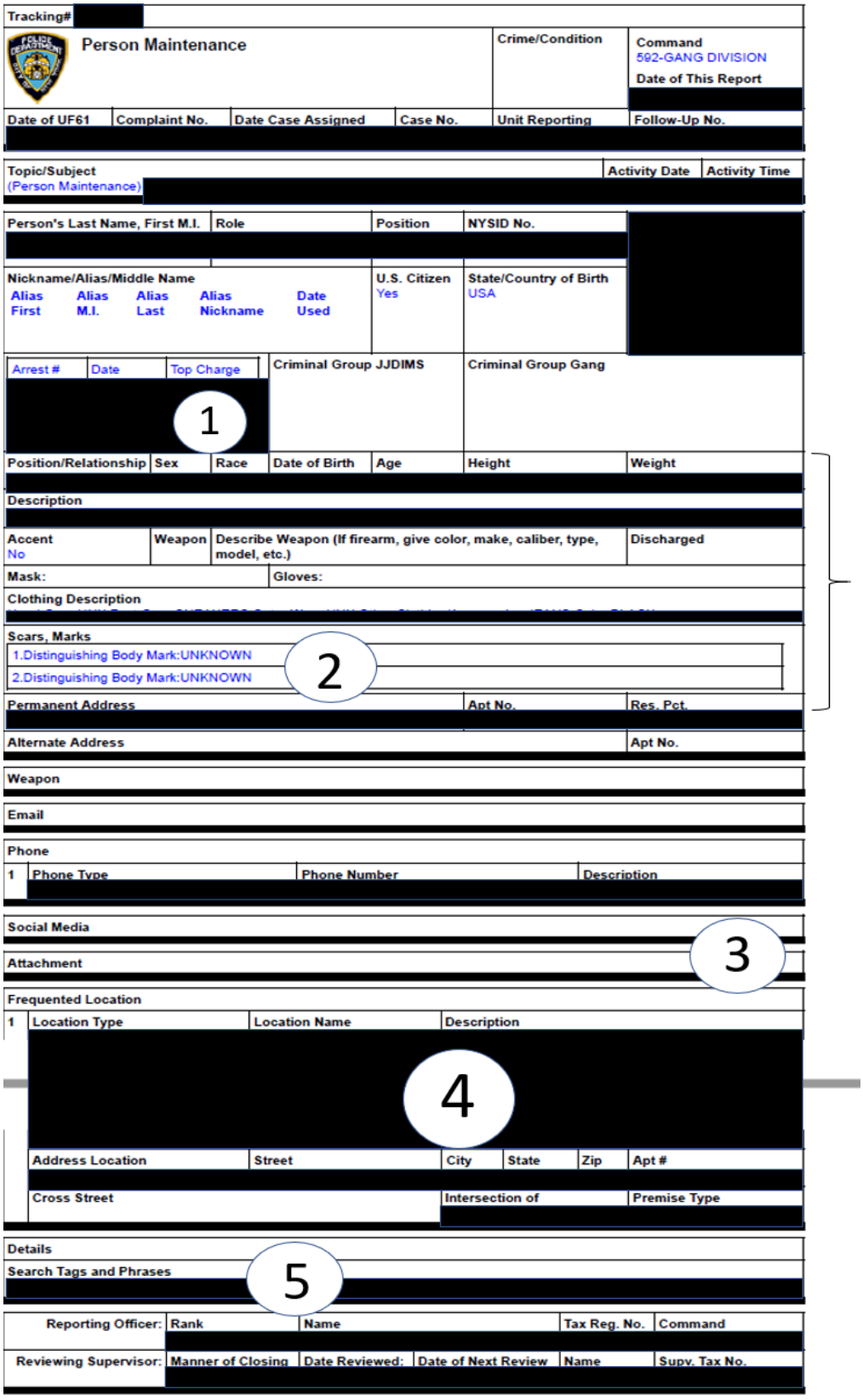
Endorsement Date	Comments
[redacted]	

Endorser:	Rank	Name	Tax Reg. No.	Command	Status
	[redacted]	[redacted]	[redacted]	[redacted]	Approved

Endorsement Date	Comments
[redacted]	

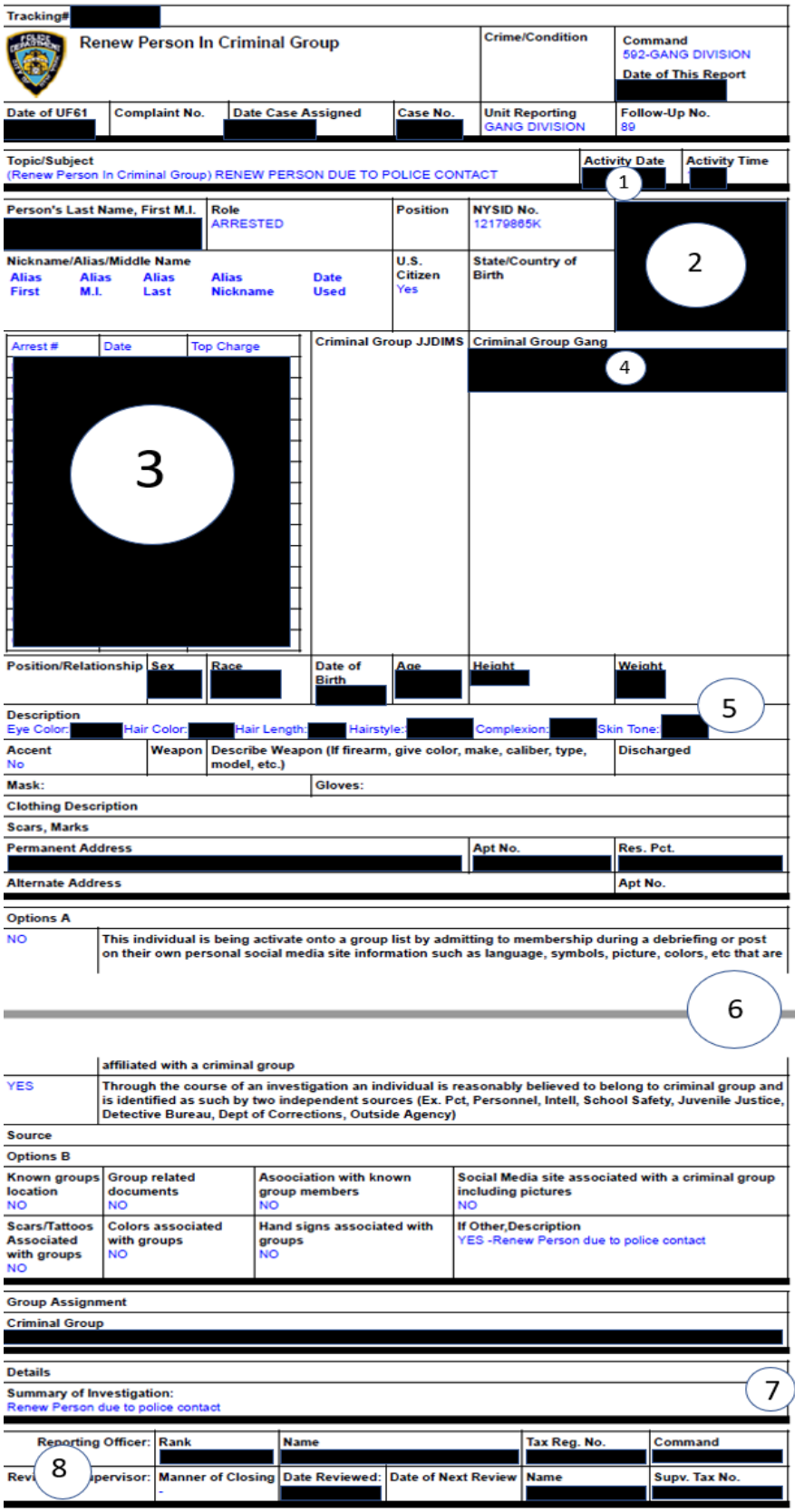
ACTIVATION DD5

1. Activity Date-Reflects the date on which the activation DD5 was created.
2. Photograph
3. Arrest History-This field will populate with Arrest Number, Date, and Top Charge, if any. This field is also where sealed arrest information currently autopopulates.
4. Criminal Group Gang-The specific criminal group to which the individual allegedly belongs.
5. Description-Fields to provide a physical description of the individual including hair style, clothing, and details related to scars, tattoos, or other marks.
6. Activation Criteria-The fields to identify which of the available criteria support including the individual in the CGD, such as:
   - self-admission on social media or via police debriefing
   - confirmation of criminal group participation by two independent sources
   - known group location
   - group related documents
   - association with known group members
   - social media site details such as posts, photographs, or language use that might indicate criminal group participation.
   - scars/tattoos associated with groups
   - colors associated with groups
   - hand signs associated with groups
   - other
7. Summary of Investigation-Field for a description of the information that supports inclusion in the CGD.
8. Reporting Officer, Reviewing Supervisor, and/or Endorser-Fields for information about the officers involved in the preparation and review of decision to add an individual to the CGD.



PERSON MAINTENANCE DD5

1. Arrest History-This field will populate with Arrest Number, Date, and Top Charge, if any.
2. Scars, Markings, Tattoos-Field to document these physical markings.
3. Social Media and Attachment-Field to identify social media accounts associated with the individual, including links to relevant social media pages. Reporting officers may attach screenshots of social media content that supports activation, along with links for a reviewing supervisor to examine that evidence personally.
4. Frequented Location-Field to identify locations the individual frequents.
5. Search Tags and Phrases-Field to identify any other relevant information about an individual can be documented in that area.


Tracking# [redacted]

Renew Person In Criminal Group

Crime/Condition | Command: 592-GANG DIVISION | Date of This Report: [redacted]

Date of UF61: [redacted] | Complaint No. | Date Case Assigned: [redacted] | Case No. | Unit Reporting: GANG DIVISION | Follow-Up No.: 89

Topic/Subject: (Renew Person In Criminal Group) RENEW PERSON DUE TO POLICE CONTACT | Activity Date | Activity Time

1

Person's Last Name, First M.I.: [redacted] | Role: ARRESTED | Position | NYSID No.: 12179865K

Nickname/Alias/Middle Name: Alias First | Alias M.I. | Alias Last | Alias Nickname | Date Used | U.S. Citizen: Yes | State/Country of Birth

2

Arrest # | Date | Top Charge | Criminal Group JJDIMS | Criminal Group Gang

3

4

Position/Relationship | Sex: [redacted] | Race: [redacted] | Date of Birth: [redacted] | Age: [redacted] | Height: [redacted] | Weight: [redacted]

Description: Eye Color: [redacted] | Hair Color: [redacted] | Hair Length: [redacted] | Hairstyle: [redacted] | Complexion: [redacted] | Skin Tone: [redacted]

5

Accent: No | Weapon | Describe Weapon (If firearm, give color, make, caliber, type, model, etc.) | Discharged

Mask: | Gloves:

Clothing Description

Scars, Marks

Permanent Address: [redacted] | Apt No. | Res. Pct.: [redacted]

Alternate Address | Apt No.

Options A

NO — This individual is being activate onto a group list by admitting to membership during a debriefing or post on their own personal social media site information such as language, symbols, picture, colors, etc that are

6

affiliated with a criminal group

YES — Through the course of an investigation an individual is reasonably believed to belong to criminal group and is identified as such by two independent sources (Ex. Pct, Personnel, Intell, School Safety, Juvenile Justice, Detective Bureau, Dept of Corrections, Outside Agency)

Source

Options B

Known groups location: NO	Group related documents: NO	Asoociation with known group members: NO	Social Media site associated with a criminal group including pictures: NO
Scars/Tattoos Associated with groups: NO	Colors associoated with groups: NO	Hand signs associated with groups: NO	If Other,Description: YES -Renew Person due to police contact

Group Assignment

Criminal Group: [redacted]

Details

Summary of Investigation: Renew Person due to police contact

7

Reporting Officer: | Rank: [redacted] | Name: [redacted] | Tax Reg. No.: [redacted] | Command: [redacted]

Reviewing Supervisor: | Manner of Closing: - | Date Reviewed: [redacted] | Date of Next Review | Name: [redacted] | Supv. Tax No.: [redacted]

8

RENEWAL DD5

1. Activity Date-Reflects the date on which the individual was renewed into the CGD.
2. Photograph of the individual.
3. Arrest History-This field will populate with Arrest Number, Date, and Top Charge, if any.
4. Criminal Group Gang-The specific criminal group to which the individual is alleged to belong.
5. Description of the Individual-Fields to provide a physical description of the individual, including hair style, clothing, and details related to scars, tattoos, or other marks.
6. Activation Criteria-The fields to identify which of the available criteria support including the individual in the CGD, such as:
   - self-admission on social media or via police debriefing
   - confirmation of criminal group participation by two independent sources
   - known group location
   - group related documents
   - association with known group members
   - social media site details such as posts, photographs, or language use that might indicate criminal group participation.
   - scars/tattoos associated with groups
   - colors associated with groups
   - hand signs associated with groups
   - other
7. Summary of Investigation-Field for a description of the information that supports inclusion in the CGD.
8. Reporting Officer, Reviewing Supervisor, and/or Endorser-Fields for information about the officers involved in the preparation and review of decision to add an individual to the CGD.

XII. Appendix B-NYPD's Impact and Use Policy for the Criminal Group Database

CRIMINAL GROUP DATABASE:
IMPACT & USE POLICY

NYPD

ABSTRACT

Information and intelligence gathering is a critical component of modern policing and an invaluable tool for detectives investigating crime. In support of its mission of reducing violent crime and protecting the public, the New York City Police Department's (NYPD) Criminal Group Database provides investigators with information about alleged gang members and additional intelligence relating to street gangs.

The NYPD produced this impact and use policy because the criminal group database is capable of sharing audio data and both still and video images with NYPD investigators.

CAPABILITIES OF THE TECHNOLOGY

Often referred to as the "Gang Database," the NYPD Criminal Group Database is used as an investigative resource to maintain consistent, up-to-date intelligence regarding criminal groups and street gangs. Based in an NYPD case management system, the Criminal Group Database efficiently centralizes vital criminal group related intelligence that would otherwise be kept throughout different isolated data compartments within the NYPD.

Information such as criminal group names, associated incidents, geographic data, inter-criminal group dynamics and relationships, and alleged criminal group membership, including lawfully-obtained photographs, aliases, addresses, known associations, is consolidated in such a way that NYPD investigators are able to discern trends, relationships, and patterns to enhance public safety, criminal investigations, and resource allocation.

Subjects cannot be entered into the NYPD Criminal Group Database automatically; inclusion data must be manually inputted into the database. If a person is fingerprinted by law enforcement, inclusion in the database does not appear in a person's criminal history or record of arrest. The NYPD Criminal Group Database cannot be accessed through the NYPD Domain Awareness System (DAS[1]). However, if DAS is used to search for information connected to a person included in the criminal group database, that inclusion will appear along with the name of the criminal group.

The Criminal Group Database does not use any biometric measuring technologies. The NYPD Criminal Group Database does not use facial recognition technologies and cannot conduct facial recognition analysis. However, still images within the database may be used as a probe image for facial recognition analysis.[2]

RULES, PROCESSES & GUIDELINES RELATING TO USE OF THE TECHNOLOGY

NYPD Criminal Group Database policy seeks to balance the public safety benefits of this technology with individual privacy. The Criminal Group Database must be used in a manner consistent with the requirements and protection of the Constitution of the United States, the New York State Constitution, and applicable statutory authorities

[1] For additional information on DAS, please refer to the DAS impact and use policy.
[2] For additional information on facial recognition, please refer to the facial recognition impact and use policy.

CRIMINAL GROUP DATABASE:
IMPACT & USE POLICY

Entry into the database is not proof of criminal behavior, it is simply an investigative lead. Entry alone is not grounds for a stop, arrest, or any other enforcement action. The database can only be accessed by limited authorized NYPD personnel. NYPD personnel may only access the database for legitimate law enforcement purposes.

A subject can be included in the Criminal Group Database in one (1) of two (2) ways. The first way involves some form of acknowledgement of criminal group membership, by either: 1a) a self-admission of criminal group membership to a member of the NYPD; 2a) being identified as a member of a criminal group by two independent and reliable sources; or 3a) social media posts admitting to membership in a criminal group.

The second way requires two (2) of the following to be true: 1b) frequent presence at a known criminal group location; 2b) possession of criminal group-related documents; 3b) association with known criminal group members; 4b) social media posts with known criminal group members while possessing known criminal group paraphernalia; 5b) scars and tattoos associated with a particular criminal group; or 6b) frequent wearing of the colors and frequent use of hand signs that are associated with particular criminal groups. A subject will only be included in the Criminal Group Database if these actions are deemed a consistent course of conduct.

A subject must be recommended for entry prior to their inclusion in the Criminal Group Database. Only a limited number of NYPD personnel can recommend a subject be entered into the database: a precinct field intelligence officer; an investigator assigned to a Detective Bureau Gang Squad; or an investigator assigned to Social Media Analysis and Research Team.

A written narrative and supporting documentation must be provided with the recommendation for Criminal Group Database entry. This recommendation is reviewed by a supervisor in a Detective Bureau Gang Squad who will either approve or reject the recommendation, or request additional analysis by the NYPD Gang Analysis Section before making a decision.

Subjects included in the Criminal Group Database are reviewed every three (3) years, and on the subjects' twenty-third (23rd) and twenty-eighth (28th) birthdays to determine if their actions and records warrant continued inclusion. Additionally, the NYPD has a mechanism for self-initiated review at any time. Once a subject is removed from the database, the fact that they once were affiliated with a criminal group is permanently hidden from the database and NYPD computer systems.

Court authorization is not required to use the Criminal Group Database. The Criminal Group Database only contains lawfully obtained information previously collected by NYPD personnel.

In accordance with the Public Oversight of Surveillance Technology Act, an addendum to this impact and use policy will be prepared as necessary to describe any additional uses of the Criminal Group Database.

No person will be the subject of police action solely because of actual or perceived race, color, religion or creed, age, national origin, alienage, citizenship status, gender (including gender

identity), sexual orientation, disability, marital status, partnership status, military status, or political affiliation or beliefs.

The misuse of the Criminal Group Database will subject employees to administrative and potentially criminal penalties.

SAFEGUARD & SECURITY MEASURES AGAINST UNAUTHORIZED ACCESS

The Criminal Group Database is confidential-password-protected and access is restricted to only authorized users. Access to the database is limited to personnel who have an articulable need for access in furtherance of lawful duty, relating to the official business of the NYPD. Authorization must be requested by a Commanding Officer, and approved by the Information Technology Bureau (ITB).

Access to the Database is limited to authorized users who are authenticated by username and password. Database access is limited to NYPD personnel with an articulable need to use the database in furtherance of a lawful duty. Access to the Criminal Group Database is removed when the technology is no longer necessary for NYPD personnel to fulfill their duties (e.g., when personnel are transferred to a command that does not use the technology).

The NYPD has a multifaceted approach to secure data and user accessibility within NYPD systems. The NYPD maintains an enterprise architecture (EA) program, which includes an architecture review process to determine system and security requirements on a case by case basis. System security is one of many pillars incorporated into the EA process. Additionally, all NYPD computer systems are managed by a user permission hierarchy based on rank and role via Active Directory (AD) authentication. Passwords are never stored locally; user authentication is stored within the AD. The AD is managed by a Lightweight Directory Access Protocol (LDAP) to restrict/allow port access. Accessing NYPD computer systems remotely requires dual factor authentication. All data within NYPD computer systems are encrypted both in transit and at rest via Secure Socket Layer (SSL)/Transport Layer Security (TLS) certifications which follow industry best practices.

NYPD personnel must abide by security terms and conditions associated with computer and case management systems of the NYPD, including those governing user passwords and logon procedures. NYPD personnel must maintain confidentiality of information accessed, created, received, disclosed or otherwise maintained during the course of duty and may only disclose information to others, including other members of the NYPD, only as required in the execution of lawful duty.

NYPD personnel are responsible for preventing third parties unauthorized access to information. Failure to adhere to confidentiality policies may subject NYPD personnel to disciplinary and/or criminal action. NYPD personnel must confirm the identity and affiliation of individuals requesting information from the NYPD and determine that the release of information is lawful prior to disclosure.

Unauthorized access of any system will subject employees to administrative and potentially criminal penalties.

CRIMINAL GROUP DATABASE:
IMPACT & USE POLICY

POLICIES & PROCEDURES RELATING TO RETENTION, ACCESS & USE OF THE DATA

The Criminal Group Database may only be used for legitimate law enforcement purposes or other official business of the NYPD including, in furtherance of criminal investigations, civil litigations and disciplinary proceedings. Authorized users are authenticated by username and password.

The Retention and Disposition Schedule for New York Local Government Records (the Schedule) establishes the minimum length of time local government agencies must retain their records before the records may be legally disposed.[3] Published annually by the New York State Archives, the Schedule ensures compliance with State and Federal record retention requirements. The NYC Department of Records and Information Services (DORIS) publishes a supplemental records retention and disposition schedule (the Supplemental Schedule) in conjunction with the Law Department specifically for NYC agencies in order to satisfy business, legal, audit and legal requirements.[4]

The retention period of a "case investigation record" depends on the classification of a case investigation record. The classification of case investigation records is based on the final disposition of the case, i.e., what the arrestee is convicted of or pleads to. Further, case investigations are not considered closed unless it results in prosecution and appeals are exhausted, it results in a settlement, it results in no arrest, or when restitution is no longer sought.

Case investigation records classified as a homicide, suicide, arson (first, second or third degree), missing person (until located), aggravated sexual assault (first degree), course of sexual conduct against a child (first degree), active warrant, or stolen or missing firearms (until recovered or destroyed), must be retained permanently. Case investigation records classified as a fourth degree arson or non-fatal (including vehicular accidents) must be retained for a minimum of ten (10) years after the case is closed. Case investigation records classified as any other felony must be retained for a minimum of twenty-five (25) years after the case is closed. Case investigation records classified as a misdemeanor must be retained for a minimum of five (5) years after the case is closed. Case investigation records classified as a violation or traffic infraction must be retained for a minimum of one (1) year after the case is closed. Case investigation records classified as an offense against a child as defined by the Child Victims Act, excluding aggravated sexual assault (first degree), course of sexual conduct against a child (first degree), must be retained until the child attains at least age fifty-five (55). Case investigation records connected to an investigation that reveals no offense has been committed by an adult must be kept for a minimum of five (5) years after the case is closed. Case investigation records connected to an investigation that reveals the individual involved was a juvenile and no arrest was made or no offense was committed must be kept for at least one (1) year after the juvenile attains age eighteen (18).

Personal information data files on criminals and suspects must be retained for at least five (5) years after the death of the criminal or suspect, or ninety (90) years after the criminal or suspect's date of birth as long as there has been no arrest in the last five (5) years, whichever is shorter. Personal

[3] *See* N.Y. Arts & Cult. Aff. Law § 57.19 - 25, *and* 8 NYCRR Part 185.
[4] *See* NYC Charter 3003.

information data files on associated persons, such as victims, relatives and witnesses must be retained as long as, or information as part of relevant case investigation record.

The misuse of any system will subject employees to administrative and potentially criminal penalties.

POLICIES & PROCEDURES RELATING TO PUBLIC ACCESS OR USE OF THE DATA

Members of the public may request information related to the NYPD Criminal Group Database pursuant to the New York State Freedom of Information Law. The NYPD will review and evaluate such requests in accordance with applicable provisions of law and NYPD policy.

EXTERNAL ENTITIES

If relevant to a criminal case, information is turned over to the prosecutor with jurisdiction over the matter. Prosecutors will provide the information to the defendant(s) in accordance with criminal discovery laws.

Other law enforcement agencies may request information contained in NYPD Criminal Group Database from the NYPD in accordance with applicable laws, regulations, and New York City and NYPD policies. The NYPD may provide information contained with the database to partnering law enforcement and city agencies pursuant to on-going criminal investigations, civil litigation and disciplinary proceedings. Information is not shared in furtherance of immigration enforcement. Affirmation that a subject is included in the NYPD's Criminal Group Database may be shared with other law enforcement agencies in the course of conducting joint gang/criminal group investigations.

Information from the Criminal Group Database is not shared with the New York City Housing Authority or employers conducting background checks. Further, consistent with local law and NYPD policy, the Department does not share information in the database with Immigration and Customs Enforcement to conduct immigration enforcement, initiate deportation proceedings, or affect visa applications or citizen applications.

Following the laws of the State and City of New York, as well as NYPD policy, information contained in the database may be provided to community leaders, civic organizations and the news media in order to further an investigation, create awareness of an unusual incident, or address a community-concern.

Pursuant to NYPD policy and local law, members of the NYPD may disclose identifying information externally only if:

1. Such disclosure has been authorized in writing by the individual to whom such information pertains to, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian and has been approved in writing by the Agency Privacy Officer assigned to the Legal Bureau;
2. Such disclosure is required by law and has been approved in writing by the Agency Privacy Officer assigned to the Legal Bureau;

3. Such disclosure furthers the purpose or mission of the NYPD and has been approved in writing by the Agency Privacy Officer assigned to the Legal Bureau;
4. Such disclosure has been pre-approved as in the best interests of the City by the City Chief Privacy Officer;
5. Such disclosure has been designated as routine by the Agency Privacy Officer assigned to the Legal Bureau;
6. Such disclosure is in connection with an investigation of a crime that has been committed or credible information about an attempted or impending crime;
7. Such disclosure is in connection with an open investigation by a City agency concerning the welfare of a minor or an individual who is otherwise not legally competent.

Government agencies at the local, state, and federal level, including law enforcement agencies other than the NYPD, have limited access to NYPD computer and case management systems. Such access is granted by the NYPD on a case by case basis subject to the terms of written agreements between the NYPD and the agency receiving access to a specified system. The terms of the written agreements also charge these external entities with maintaining the security and confidentiality of information obtained from the NYPD, limiting disclosure of that information without NYPD approval, and notifying the NYPD when the external entity receives a request for that information pursuant to a subpoena, judicial order, or other legal process. Access will not be given to other agencies for purposes of furthering immigration enforcement.

The NYPD purchases Criminal Group Database associated equipment or Software as a Service (SaaS)/software from approved vendors. The NYPD emphasizes the importance of and engages with vendors and contractors to maintain the confidentiality, availability, and integrity of NYPD technology systems.

Vendors and contractors may have access to NYPD Criminal Group Database associated software or data in the performance of contractual duties to the NYPD. Such duties are typically technical or proprietary in nature (e.g., maintenance or failure mitigation). In providing vendors and contractors access to equipment and computer systems, the NYPD follows the principle of least privilege. Vendors and contractors are only allowed access on a "need to know basis" to fulfill contractual obligations and/or agreements.

Vendors and contractors providing equipment and services to the NYPD undergo vendor responsibility determination and integrity reviews. Vendors and contractors providing sensitive equipment and services to the NYPD also undergo background checks.

Vendors and contractors are legally obligated by contracts and/or agreements to maintain the confidentiality of NYPD data and information. Vendors and contractors are subject to criminal and civil penalties for unauthorized use or disclosure of NYPD data or information.

If information contained within the database is disclosed in a manner violating the local Identifying Information Law, the NYPD Agency Privacy Officer, upon becoming aware, must report the disclosure to the NYC Chief Privacy Officer as soon as practicable. The NYPD must make reasonable efforts to notify individuals effected by the disclosure in writing when there is potential risk of harm to the individual, when the NYPD determines in consultation with the NYC Chief

Privacy Officer and the Law Department that notification should occur, or when legally required to do so by law or regulation. In accordance with the Identifying Information Law, the NYC Chief Privacy Officer submits a quarterly report containing an anonymized compilation or summary of such disclosures by City agencies, including those reported by the NYPD, to the Speaker of the Council and makes the report publically available online.

TRAINING

NYPD personnel using the NYPD Criminal Group Database receive command level training on the proper operation of the technology and associated equipment. NYPD personnel must operate the database in compliance with NYPD policies and training.

INTERNAL AUDIT & OVERSIGHT MECHANISMS

Only a limited number of NYPD personnel can recommend a subject be entered into the database; only a precinct field intelligence officer, an investigator assigned to a Detective Bureau Gang Squad, or an investigator assigned to the Social Media Analysis and Research Team may recommend a subject be entered into the database. This formal recommendation requires a written narrative and supporting documentation that justify database inclusion. Recommendations are reviewed by a supervisor in a Detective Bureau Gang Squad who will either approve or reject the recommendation, or request additional analysis by the Department's Gang Analysis Section.

Subjects included in the Criminal Group Database are reviewed every three (3) years, and on the subjects' twenty-third (23rd) and twenty-eighth (28th) birthdays to determine if their actions and records warrant continued inclusion. Additionally, the NYPD has a mechanism for self-initiated review at any time. Once a subject is removed from the database, the fact that they once were affiliated with a criminal group is permanently hidden from the database

Supervisors of personnel who have access to the Criminal Group Database are responsible for security and proper utilization of the technology and associated equipment. Supervisors are directed to inspect all areas containing NYPD computer systems at least once each tour and ensure that all systems are being used within NYPD guidelines.

Immutable audit logs are created when any information is searched or accessed through the NYPD Criminal Group Database. The log-in and use of the system is traceable to a particular user and periodically audited for misuse by the precinct or unit's Commanding Officer. Allegations of misuse are internally investigated at the command level or by the Internal Affairs Bureau (IAB).

All members of the NYPD are advised that NYPD computer systems and equipment are intended for the purposes of conducting official business. The misuse of any system will subject employees to administrative and potentially criminal penalties. Allegations of misuse are internally investigated at the command level or by IAB.

Integrity Control Officers (ICOs) within each Command are responsible for maintaining the security and integrity of all recorded media in the possession of the NYPD. ICOs must ensure all authorized users of NYPD computer systems in their command understand and comply with computer security guidelines, frequently observe all areas with computer equipment, and ensure

security guidelines are complied with, as well as investigating any circumstances or conditions which may indicate abuse of the computer systems.

Requests for focused audits of computer activity from IAB, Commanding Officers, ICOs, Investigations Units, and others, may be made to the Information Technology Bureau.

HEALTH & SAFETY REPORTING

There are no known health and safety issues associated with the NYPD Criminal Group Database or the associated equipment.

DISPARATE IMPACTS OF THE IMPACT & USE POLICY

The safeguards and audit protocols built into the impact and use policy for the NYPD Criminal Group Database mitigate the risk of impartial and biased law enforcement. The Criminal Group Database is an investigative resource to maintain consistent, up-to-date intelligence regarding criminal groups and street gangs. The Criminal Group Database efficiently centralizes vital criminal group related intelligence that would otherwise be kept throughout different isolated data compartments within the NYPD. The Criminal Group Database does not use any biometric measuring technologies.

Critics have asserted that inclusion in the Criminal Group Database disparately impacts people of color and has significant collateral consequences. Entry into the Criminal Group Database is not proof of criminal behavior, it is only an investigative lead. Entry alone is not grounds for a stop, arrest, or any other enforcement action. Moreover, New York State does not permit civil gang injunctions such as those routinely utilized in other jurisdictions. Unlike many states, New York does not have a sentencing enhancement for gang/criminal group members, nor a statute that criminalizes gang/criminal group membership. A subject's presence in the NYPD Criminal Group Database simply does not have the collateral consequences comparable to other jurisdictions.

The NYPD is committed to the impartial enforcement of the law and to the protection of constitutional rights. The NYPD prohibits the use of racial and bias-based profiling in law enforcement actions, which must be based on standards required by the Fourth and Fourteenth Amendments of the U.S. Constitution, Sections 11 and 12 of Article I of the New York State Constitution, Section 14-151 of the New York City Administrative Code, and other applicable laws.

Race, color, ethnicity, or national origin may not be used as a motivating factor for initiating police enforcement action. Should an officer initiate enforcement action against a person, motivated even in part by a person's actual or perceived race, color, ethnicity, or national origin, that enforcement action violates NYPD policy unless the officer's decision is based on a specific and reliable suspect description that includes not only race, age, and gender, but other identifying characteristics or information.

XIII. Appendix C-Computed Criminal Group Database (CGD) Descriptive Statistics

The Office's analysis of the CGD included a statistical evaluation of data provided by NYPD regarding a number of variables including race, age, and the criteria identified to support inclusion of individuals in the CGD. OIG-NYPD considered both the deactivated and active members of the population, as well as the changes to the composition of the database in the 2013-2022 period. All calculations were completed using R, a programming language for statistical computation and graphic generation.[88]

The CGD inclusion criteria are:

Option A requires at least one of the following:

a. The individual "self-admits" membership in a criminal group (i.e., use of language, symbols, pictures, colors, etc. that are affiliated with a criminal group) either in person or via social media posts;[89] or
b. Two independent sources conclude, following an investigation, that an individual is reasonably believed to belong to a criminal group. Sources can include NYPD precinct personnel, School Safety Agents, Juvenile Justice staffers, Intelligence or Detective Bureau investigators, Department of Corrections employees, or representatives from external agencies.[90]

Option B requires at least two of the following:

1. Frequent presence at a known criminal group location;
2. Possession of criminal group-related documents;
3. Association with known criminal group members;
4. Social media posts with known criminal group members while possessing known criminal group paraphernalia;
5. Scars and tattoos associated with a particular criminal group; or

[88] *The R Project for Statistical Reporting*, https://www.r-project.org/ (last visited Apr. 16, 2023) (The specifics regarding R as a programming language, its applications and links to current versions may be referenced here).
[89] NYPD defines self-admission to include statements affirming criminal group membership during questioning by officers, as well as social media posts referencing criminal groups that were deemed by officers with knowledge of gang activity to indicate criminal group membership.
[90] NYPD did not explain what is required to establish a "reasonable belief," as discussed in the body of the Report.

6. Frequent wearing of the colors and frequent use of hand signs that are associated with particular criminal groups.[91]

Table A: The Number and Percentages of Total Active CGD Entrants According to Racial Identification

	AMER IND	AAPI	BLACK	HISPANIC	WHITE	N/A	ALL
OPTION A ONLY	1 (100%)	32 (38.6%)	4,574 (40.8%)	2,443 (51.7%)	54 (51.9%)	-- --	7104 (44.0%)
OPTION B ONLY	-- --	10 (12.0%)	1,375 (12.3%)	539 (11.4%)	9 (8.7%)	-- --	1,933 (12.0%)
BOTH	-- --	41 (49.4%)	5,272 (47.0%)	1,747 (36.9%)	41 (39.4%)	3 (100%)	7,104 (44.0%)
TOTAL	**1 (0.0%)**	**83 (0.5%)**	**11,221 (69.5%)**	**4,729 (29.3%)**	**104 (0.6%)**	**3 (0.0%)**	**16,141**

NOTE: The percentage values noted in the parentheses below the number of individuals in the first three rows reflect the proportion of each group entered through a specific criteria pathway. The percentage values noted in the parentheses below the 'Total' in the fourth row reflect each racial/ethnic group's proportion of the CGD. They are current as of December 2022.

Analytical Findings: Table A captures the number and percentage of individuals who are included in the gang database as of December 2022 according to their racial identifications, as recorded by NYPD. As detailed in the text of the Report, the vast majority of those included in the CGD are classified as Black or Hispanic (when aggregating the subcategories of White and Black Hispanic together into a single one), while White and American Indian identifying members of the public comprise the smallest numbers and percentages of those included in the database.

[91] NYPD has not defined "frequent" in this context.

Table B: Entry Criteria to Support Inclusion in the CGD from 2013 – 2022, by Age

	MINOR	ADULT	TOTAL
OPTION A ONLY	416 (24.6%)	6,688 (46.3%)	7,104 (44.0%)
OPTION B ONLY	219 (13.0%)	1,714 (11.9%)	1,933 (12.0%)
BOTH	1,054 (62.4%)	6,050 (41.9%)	7,104 (44%)
TOTAL	1,689 (10.5%)	14,452 (89.5%)	16,141

NOTE: ***The percentage values noted in the parentheses below the number of individuals in the first three rows reflect the proportion of each group entered through a specific pathway. The percentage values noted in the parentheses below the 'Total' in the fourth row reflect each age group's proportion of the CGD.*** **They are current as of December 2022.**

Analytical Findings: Minors constituted 10.5% of the total CGD population, and were typically activated through a combination of Option A and B. Adults, who made up 89.5% of the CGD, were more likely to be activated through Option A, than other pathways.

Figure A: Levels of Association Between Option A and B Criteria for CGD Activation

	SELF ADMISSION	*TWO SOURCES*	*KNOWN GROUP LOCATION*	*GROUP DOCUMENTS*	*KNOWN MEMBERS*	*SOCIAL MEDIA*	*SCARS/TATTOOS*	*COLORS*	*HAND SIGNS*	*OTHER*
SELF ADMISSION	1.00									
TWO SOURCES	-0.58	1.00								
KNOWN GROUP LOCATION	-0.33	0.21	1.00							
GROUP DOCUMENTS	-0.22	0.31	0.37	1.00						
KNOWN MEMBERS	-0.32	0.18	0.78	0.35	1.00					
SOCIAL MEDIA	0.16	-0.11	0.06	-0.01	0.22	1.00				
SCARS/TATTOOS	0.05	0.00	0.05	0.05	0.06	0.11	1.00			
COLORS	0.18	-0.06	0.05	-0.01	0.13	0.37	0.21	1.00		
HAND SIGNS	0.26	-0.05	0.12	-0.04	0.22	0.47	0.13	0.64	1.00	
OTHER	0.25	-0.11	-0.20	-0.18	-0.22	-0.24	-0.05	0.00	0.06	1.00

Analytical Findings: The matrix graphic above illustrates the degree to which the criteria used to activate individuals into the database were related to each other with those values closest to +1, signifying strong positive associations and those approaching -1 strongly negative. Presence at locations and associations with known gang members were found to have the strongest relationship (*r = 0.78)* meaning that when one was used to activate an individual, the other likely was as well. Given that NYPD does not have defined thresholds for association or location, and many of the locations observed involved NYCHA housing complexes in their entirety, that correlation was concerning to observe. The relationship between displaying of colors as an entry criteria and the use of hand signs as an entry criteria by those included in the database was nearly as strong, *(r = 0.64)* and likely speaks to

activity observed in social media content, given the moderate correlation both pathways had with social media. Conversely, self-admission and the confirmation of gang participation by two independent sources had a coefficient of -0.58, meaning when that when one is used to activate an individual, the other typically is not. Group Documents and Colors were found to have a low negative correlation coefficient of -0.01, meaning that no strongly defined relationship existed between the two criteria. [92]

[92] Statistical analysis often considers the relationship between two variables. Here, OIG-NYPD sought to determine how the eight criteria for activation into the database related to each other. That was done through the calculation of Pearson Correlation Coefficients, which quantified the measure of the linear association between the two factors. The coefficient has a value between -1 and 1, where -1 indicates a perfectly negative linear relationship between two variables, 0 no correlation and 1 a perfectly positive linear relationship. As coefficient values move positively or negatively away from 0, the strength of the relationship between the variables increases. A correlation matrix is a table used to graphically demonstrate the relationship between a range of variables. For further insight into the applications of correlations analytically or other statistical concepts, *see*, *e.g.*, *How to Read a Correlation Matrix*, STATOLOGY, https://www.statology.org/how-to-read-a-correlation-matrix/ (last visited Apr. 16, 2023).

XIV. Appendix D-Jurisdictional Analysis of Gang Databases Across the United States

A review of other jurisdictions reveals that NYPD's criminal group database policies are generally consistent with those of other major U.S. police departments. Gang databases in other major cities have also been subject to criticism from members of the public, as well as oversight bodies, including inspectors general and public auditors. The existence and use of those data repositories have also been the subject of litigation.

A. Investigations and Litigation Relating to Gang Databases

The use of centralized gang databases in cities including Portland, Chicago, and Boston as well as at the state level in other jurisdictions has led to criticism of the handling of the systems by varying groups, including litigation where inclusion in the database is alleged to violate the constitutional rights of those affected.[93] A number of cities and states have discontinued or reformed the use of such databases as a result of factors including data inaccuracies, litigation, or public criticism supported by evidence of harm experienced by individuals. For example, in California, a 2016 state audit found that the CalGang database had significant errors and did not sufficiently protect residents' right to privacy.[94] After sampling database entries, auditors reported that a significant number of entries within the sample lacked adequate supporting evidence for inclusion. Subsequently, in 2020, LAPD withdrew from the CalGang program. While other entities, including local police departments as well as state and federal law enforcement agencies, retained access to the database, the state attorney general, citing accuracy issues and misuse of the tool by the LAPD, revoked access to the CalGang entries generated by that Department.[95]

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[93] *See*, *e.g.*, Complaint For Declaratory and Injunctive Relief and Action in the Nature of Certiorari, *ACLUM, et al. v. City of Boston, et al.*, No. 1884CV03561-E [Suffolk Super. Ct. Jan. 4, 2019]; Consent Agreement, *Providence Youth Student Movement v. Elorza et al.*, No.1:19-cv-00378 [D.R.I. Mar. 10, 2020]; Class Action Complaint, *Chicagoans for an End to the Gang Database v. City of Chi.*, 1:18-cv-04242 (N.D. Ill. 2018); Complaint, *Wichita Gang Database Lawsuit Progeny v. City of Wichita et al.*, 6:21-cv-01100-EFM-ADM (D. Kan. 2022).

[94] Cal. State Auditor*, supra* note 8.

[95] Press Release, Cal. Att'y Gen, Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program, (Jul. 14, 2020), https://oag.ca.gov/news/press-releases/attorney-general-becerra-restricts-access-lapd-generated-calgang-records-issues; CAL. ATT'Y GEN., ATTORNEY GENERAL'S ANNUAL REPORT ON CALGANG FOR 2021, https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2021.pdf; *CalGang Reports*, CAL. ATT'Y GEN., https://oag.ca.gov/calgang/reports.

In 2018, the city of Portland's Auditor investigated the city Police Department's Gang Enforcement Team and reviewed its use of both a publicly disclosed and an undisclosed list of gang affiliations.[96] The disclosed list, which had been public knowledge for at least two decades, was subject to certain requirements due to a 1994 federal court decision. That ruling found practices with respect to the gang affiliation list unconstitutional and required, among other things, that individuals be notified of inclusion in the list, have a right to appeal inclusion, and that records of inclusion be purged after four years.[97] The undisclosed list was uncovered during the Auditor's investigation, and was not subject to the safeguards and policies applicable to the disclosed list. When that undisclosed list came to light, the city's police department discontinued their use of it.[98]

In 2019, the City of Chicago's Inspector General published findings concerning the Chicago Police Department's (CPD) use of a gang database.[99] The Report highlighted concerns about accuracy, data sharing, a lack of public transparency, potential violations of procedural rights, the limited review of designations by supervisors, and a racial/ethnic category composition of more than 95% Black and Hispanic individuals. In turn, the CPD promised to replace the database, but it remained in use and a suit was filed by members of the public. The litigation, resolved in September 2020, resulted in certain commitments by the CPD regarding the gang database, including, inter alia, stricter requirements for designating gang members, limitations on data sharing, the ability of members of the public to file a formal request for notification to learn whether they are included, and an appeals process.[100] As of winter 2022, the CPD had not fulfilled those commitments. Of particular concern were the outstanding promises to ensure the adoption of new policy related to the applications of the technology or the launching of the replacement database termed the Criminal Enterprise Information System (CEIS), which remained in development.

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[96] Portland City Auditor Audit Servs. Div., Gang Crime Investigations: Lack of Accountability and Transparency Reduced the Community's Trust in Police, (Mar. 2018), https://www.portlandoregon.gov/auditservices/article/677594.

[97] Police Advisory Committee, *Data Driven Efforts to Combat Gun Violence: A Discussion on Civil Liberty Protections* (2020) at 38 (citing *Ysasaga v. City of Portland*, 93-1175-ST [D. Or. 1994].

[98] *Police Bureau Ended the Most Active List of Gang Members and Associates*, CITY OF PORTLAND – AUDIT SERVS., (May, 20 2019 at 9:00 AM), https://www.portland.gov/audit-services/news/2019/5/20/police-bureau-ended-most-active-list-gang-members-and-associates.

[99] CITY OF CHI. OFF. OF THE INSPECTOR GEN., REVIEW OF THE CHICAGO POLICE DEPARTMENT'S "GANG DATABASE", (Apr. 2019), https://igchicago.org/wp-content/uploads/2019/04/OIG-CPD-Gang-Database-Review.pdf.

[100] *Chicagoans for an End to the Gang Database v. City of Chicago*, MACARTHUR JUSTICE CENTER (Jun. 19, 2018), https://www.macarthurjustice.org/case/chicagoans-for-an-end-to-the-gang-database/.

In 2018, the Massachusetts branch of the American Civil Liberties Union led a coalition that filed a lawsuit in state court against the Boston Police Department (BPD) seeking information about its use of a gang database.[101] The lawsuit alleged that the BPD used affiliation information to target and surveil youth and that nearly 90% of the individuals included in the database were Black and Hispanic, indicating potential racial/ethnic bias in the criteria for inclusion. In July 2022, the suit was settled; the details of the agreement were not made public.

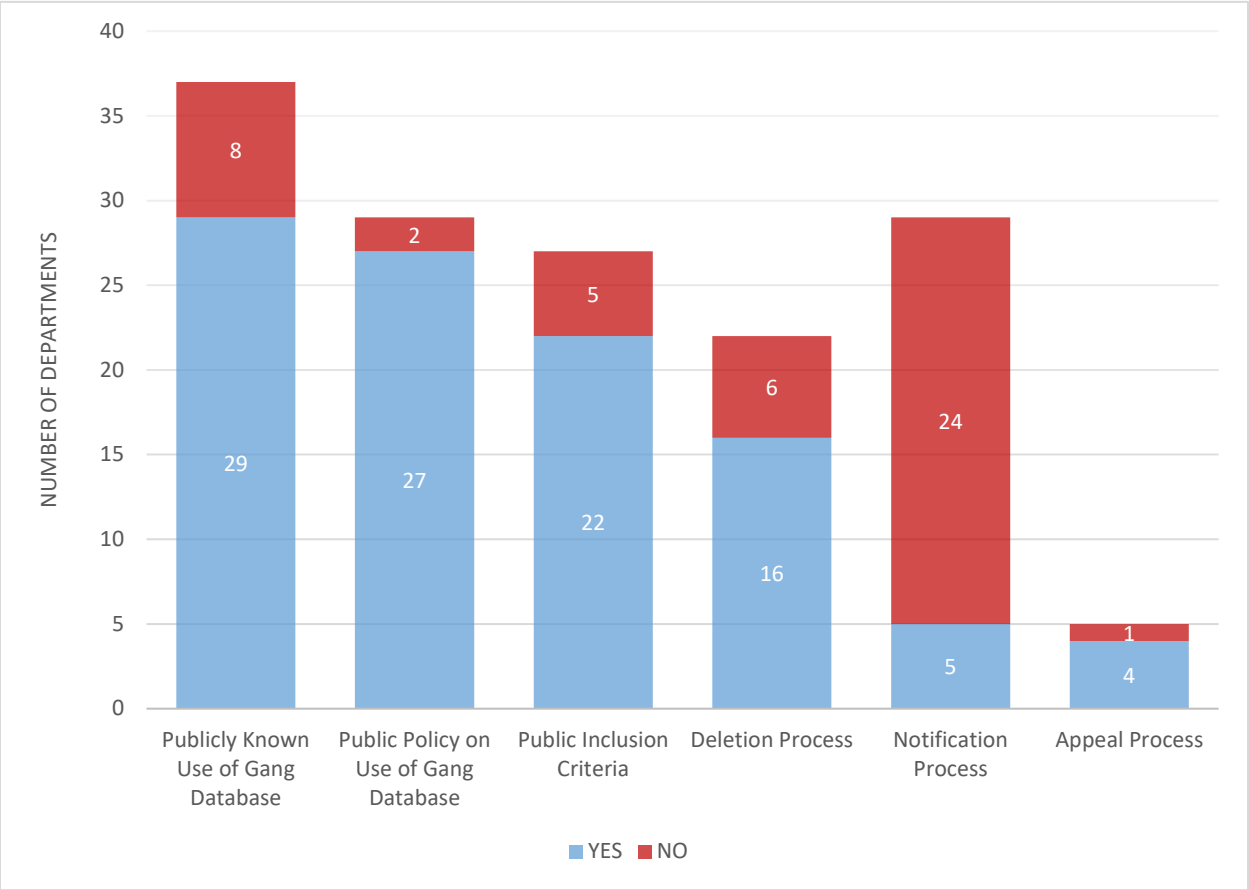
B. Review of Gang Database Policies Nationwide

OIG-NYPD reviewed gang database policies from 37 U.S. law enforcement departments in 25 states. The entities that were selected for review included the largest 30 U.S. jurisdictions by population in which the police departments maintain gang databases. OIG-NYPD considered each jurisdiction's criteria for inclusion into the databases and whether the policies for the systems were publicly available, including the criteria for inclusion as well as the details related to the review and removal of entries. Figure 2 illustrates the availability and existence of gang database policies across the departments that OIG-NYPD reviewed. As noted above, NYPD's criminal group database policies are generally consistent with the applicable policies in the majority of other jurisdictions that maintain such data.

The analysis references gang databases that were examined at both the city and state levels of operation.

[101] Complaint for Declaratory and Injunctive Relief and Action in the Nature of Certiorari, *ACLUM, et al. v. City of Boston, et al.*, No. 1884CV03561-E [Suffolk Super. Ct. Jan. 4, 2019].

Figure A: Policies of 37 Law Enforcement Departments



Publication of policies

For 29 of the 37 departments reviewed, there was evidence (such as published statements by the relevant police department) that the public was aware that the agencies operated gang databases. The majority of law enforcement departments collected information as part of broader anti-gang initiatives. For example, the Memphis Police Department (MPD), which contributes data to the statewide Tennessee gang database, also participates in the Shelby County Multi-Agency Gang Unit, a group formed in 2011 with representatives from a variety of jurisdictions to conduct investigations on criminal groups and disrupt the illegal activities in which they engage.[102] Information can be accessed from the centralized state-level depository as needed to support those efforts. Similarly, all cities in Texas with populations of

[102] MULTI-AGENCY GANG UNIT, SHELBY CO. SHERIFF'S DEPT., https://www.shelby-sheriff.org/multi-agency-gang-unit (last visited Apr. 16, 2023.

over 50,000 residents utilize TxGang, the statewide database created to store information collected by local law enforcement interests regarding criminal groups.[103] In 27 of the 29 agencies with access to and/or which maintain gang databases, policies related to implementation, administration, and uses of the systems are publicly available.

Criteria for Inclusion

Of the 27 state and city departments with public gang database policies, 22 published the criteria for entry into the data repositories. In general, the conditions for inclusion were consistent across jurisdictions: police considered attire, "hangout" locations, identification by established informants, self-admission of gang membership, and social associations captured online via varying platforms as the main indicators of criminal group affiliation.

For five of the states' policies reviewed—Texas, Maryland, California, Louisiana, and Arizona—state-wide statutes have made aspects of gang membership itself illegal. Four departments—Albuquerque, New Mexico; Denver, Colorado; Evanston, Illinois; and Minneapolis, Minnesota—require past or current criminal behavior (which can include gang membership in states where it is illegal) for inclusion in gang databases.

Some jurisdictions require criminal conduct that extends beyond gang affiliation for entry into the gang database; while others use a threshold level of "points" for entry on the basis of certain observed behaviors. For example, the Boston Police Department's gang database policy bases entry on the accumulation of points for behavior.[104] A person observed with an alleged gang associate would be assigned two points; eight for being a victim of gang-related violence. At ten points or above, the individual may be added to the gang database.

Gang membership is not a crime in New York State, and inclusion in NYPD's database does not require past or current criminal behavior—any individual suspected of being affiliated with a criminal group may be included. Thus, the threshold for

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[103] See TEXAS DEP'T. OF PUBLIC SAFETY, LAW ENFORCEMENT SUPPORT, https://txgang.dps.texas.gov/les/login (last visited Apr. 16, 2023).

[104] BOSTON POLICE DEP'T., *Police Commissioner's Special Order, Subject: Rule 335, Gang Assessment Database* (Jun. 8, 2021), https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/60c008de38813c6f9ecda1f9/1623197918488/ACFrOgB2rFeSFgLdZEW8mws9eunEbgjaWMwzU5UJnIMONIeFfoVLprGEvsHWcfTYpaI4hoI30Ioacz7pDChr_r4LIBNaBY0RnDvKYv4BH-1fuE_FV0q6FmD6J07iocJKdM9B95o1TG8BvW6GTi9o.pdf. Even with those attempts to create more objective criteria for inclusion, Boston Police Department's Gang Database was described as "flawed" in a federal court decision (*Ortiz v. Garland*, 23 F.4th 1 [1st Cir. 2022]).

entry into the CGD is lower than in some other jurisdictions where there must be criminal behavior other than gang membership. The remaining criteria used by NYPD to designate gang membership are similar to those identified in other jurisdictions.

Notification

Of the jurisdictions that were reviewed, two states – California and Nevada – require police to notify individuals of their inclusion in a gang database.[105] In 2021, legislation requiring notification was introduced in Arizona and Texas. For California jurisdictions (outside of Los Angeles), incorporation into the CalGang database requires written notice to individuals alerting them to their inclusion; notice must include the association alleged, the evidence of that association, and a description of the process to contest the designation. In Nevada, inclusion in a local law enforcement agency's gang database requires that written notice be provided to individuals; and the notice must incorporate detailed instructions on the process for contesting that status.[106]

In Rhode Island, a youth advocacy group sued the Providence Police Department (PPD) regarding its use of gang designations in its intelligence database, resulting in a consent decree reforming the database. One of the reforms was that law enforcement must disclose, upon an individual's inquiry, whether individuals are designated as gang members in the database.[107] Finally, while Chicago has not yet deployed the promised reforms to its gang database practices and operationalized the replacement with the CEIS, those reforms include a mechanism by which the public can request status notification. As of November 2022, the CPD was accepting public comment on the draft policy that was developed in November 2021 and delineated the proposed improvements.[108]

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[105] *See* CAL. CODE REGS. tit. 11, § 753.6(a) (2023); NEV. REV. STAT. ANN. § 179A.500 (LexisNexis 2023). In addition, legislation has been proposed in Arizona and Texas which would require notification to individuals who are in the states' gang databases (S.B. 1186, 55th Leg., 1st Reg. Sess. [Az. 2021]; H.B. 230, 88th Leg. [Tx 2022]).

[106] NEV. REV. STAT. ANN. § 179A.500 (LexisNexis 2023).

[107] Consent Agreement, *Providence Youth Student Movement v Elorza et al.*, No.1:19-cv-00378 [D.R.I. Mar. 10, 2020].

[108] Heather Cherone, *3 Years after Watchdog Warned Police Gang Databases were 'Deeply Flawed,' New System Yet to Launch*, WTTW (May 4, 2022), https://news.wttw.com/2022/05/04/3-years-after-watchdog-warned-police-gang-databases-were-deeply-flawed-new-system-yet; Chi. Police Dep't, *Criminal Enterprise Information System Policy*, CHICAGOPOLICE.ORG, https://home.chicagopolice.org/draft_policy/new-public-posting-request-criminal-enterprise-information-system-policy-draft/.

With respect to juveniles, Las Vegas law enforcement personnel inform parents in person, via a home visit, if a minor child will be added to a gang database.[109] The Boston Police Department (BPD) notifies the Boston Safe and Successful Youth Initiative (SSYI), an initiative that seeks to redirect youth away from engagement in criminal activity, of all juveniles that are included in its database. The purpose of that notification is to connect juveniles with appropriate services and ultimately to remove all minors from the gang database.[110] California, with the exception of Los Angeles, requires police officers to inform minors and their parents or guardians that they are suspected gang members before entering them into CalGang, unless such notification would compromise active criminal investigations, or health or safety of the juveniles.[111] There is proposed legislation currently under consideration in Arizona that would require that, upon request, minors and their parents or guardians be notified of database inclusion, unless such notification would affect open cases or compromise aspects of the lives of the minors.

Although NYPD has a Youth Services Division which focuses specifically on at-risk youth and preventing violence, the Department has no notification procedure in place for any individual entered into the CGD, including minors.[112] While the Department has considered a notification procedure for minors in the past, it has not implemented such a practice. Well-documented research indicates that family support and guidance can be effective deterrents for juveniles at-risk of engaging with criminal groups. A notification mechanism would provide parents with concrete evidence of such involvement and create opportunities for engagement in deterrence activities.[113]

Policies on review and removal processes

Three-fourths of the departments with published criteria for database entry describe the processes required for the review and deletion of gang database entries (16 out of 22). Police guides and state statutes use the terms "purge," "deletion," "re-

[109] Meeting of the Assembly Committee on Judiciary, 2019 Leg., 80th Sess. (Nev. 2019).
[110] BOSTON POLICE DEP'T, *supra*, note 102.
[111] CAL. CODE REGS. tit. 11, § 750 (2023).
[112] . N.Y.C. Police Dep't, *Building on Neighborhood Policing, Commissioner Shea Outlines New Strategy to Prevent and Address Youth Crime* (Jan. 29, 2020), https://www.nyc.gov/site/nypd/news/pr0129/building-neighborhood-policing-commissioner-shea-outlines-new-strategy-prevent-address#/0. *See also*, N.Y.C. Police Dep't, *Youth Services*, https://www.nyc.gov/site/nypd/bureaus/administrative/youth-services.page (last visited Apr. 16, 2023).
[113] U.S. Dep't of Just. & U.S. Dep't of Health and Human Services, Changing Course: Preventing Gang Membership, *Chapter 6. What Should Be Done in the Family to Prevent Gang Membership? (2019)*, https://www.ojp.gov/pdffiles1/nij/243470.pdf; *see also* New Jersey Attorney General, NJ GangFree, https://www.njoag.gov/nj-gang-free/parents/ (last visited Apr. 16, 2023).

moval," and "destruction" interchangeably across jurisdictions. Only the Denver Police Department applies a precise definition of "purge" as "the complete destruction of a physical file and the permanent deletion from any Intelligence Unit computer files, systems, or databases."[114]

At the state level, the Georgia Criminal Street Gang Database (GCSGD) became operational in February 2020.[115] The system collects information on gang members and associates from agencies operating across the state, facilitating its exchange and use for investigative, prosecutorial, and corrections purposes.[116] State law requires that every five years, the individuals that are included in the database are to be evaluated to determine whether or not cause exists for them to remain in the system. When inclusion is no longer warranted, the individuals will be removed. Other states, such as California (with statutes stipulating every five years) and Minnesota (three years), reference "purging" and "destroying" their records in specified timeframes after their review, in the absence of identified grounds for individuals to remain active in their databases.

At the local level, the Evanston, Illinois Police Department uses "temporary files" to actively investigate whether a person or group qualifies for entry into the department's Criminal Intelligence System. Temporary files are not retained for more than one year; thereafter the information must be purged or entered into the database, if applicable.[117]

NYPD's approach is consistent with the majority of jurisdictions reviewed in its approach to the handling of information supporting inclusion once an individual has been deactivated. While the Department does not purge the details for inactive entries in the CGD from its systems, that information will not appear in response to searches of DAS or other NYPD databases once an individual has been removed from the CGD.

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114 DENVER POLICE DEP'T, OPERATIONS MANUAL § 118.03, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf.

115 Ga. Bureau of Investigation, *Georgia Criminal Street Gang Database Operational*, GA. BUREAU OF INVESTIGATION (Feb. 5, 2020), https://gbi.georgia.gov/press-releases/2020-02-05/georgia-criminal-street-gang-database-operational.

116 GA. CODE ANN. § 16-15-11 (2022).

117 EVANSTON POLICE DEP'T, POLICY MANUAL (2018), https://www.documentcloud.org/documents/4636755-Evanston-Police-Department-Policy-Manual.html.

Policies on appeals processes

Four jurisdictions of the 37 reviewed allow individuals included in a gang database to appeal or contest their designations in the systems. For example, in California (with the exception of Los Angeles), an individual requesting removal from the CalGang database can submit various types of evidence, including proof of community service hours, participation in gang intervention or prevention programs, and the covering up of tattoos indicative of criminal street gang membership to support their claims. The law enforcement agency must then provide written notice of its decision within 30 days and, if the request is denied, the individual may seek review of the decision in court.[118] In November 2021, the Chicago City Council delegated to the Chicago Police Board, an independent civilian body that handles police disciplinary cases, the power to hear appeals by individuals seeking removal from CPD's gang database and to make rules for handling those appeals.[119] While the Chicago Police Department does not inform the individuals who are in the gang database of their inclusion, that information may be obtained via the submission of Illinois Freedom of Information Act (FOIA) requests to the agency.[120] A number of advocacy groups operating in Illinois have established templates for individuals to use when making such requests. In Rhode Island, those designated as gang members in Providence's Intelligence Assessment Database can appeal their designation to one of two agencies.[121]

In New York City, even if an individual were to determine that they are in the CGD, NYPD does not have a process for members of the public to request their removal from the database.

[118] CAL. PENAL CODE § 186.34 (Deering 2023).
[119] CHI. POLICE BOARD, 2021 ANN. REPORT 12 (2021), https://www.chicago.gov/content/dam/city/depts/cpb/AnnualReports/CPBAnnualReport2021.pdf.
[120] 5 ILL. COMP. STAT. ANN. 140/1 (LexisNexis 2022).
[121] Consent Agreement, *Providence Youth Student Movement v. Elorza et al.*, No.1:19-cv-00378 [D.R.I. Mar. 10, 2020].