

# Report to the Legislature

## SF 2725 Workgroup

January 31, 2011

As required by 2010 Minn. Session Laws, Chapter 383, section 6

Required Notice

As required by Minnesota Statutes, section 3.197, the cost of preparing this report is \$419.30.

January 31, 2011

The Honorable Warren Limmer  
State Senator  
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St. Paul, MN 55155 -1601

The Honorable Steve Smith  
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The Honorable Ron Latz  
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The Honorable Joe Mullery  
State Representative  
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The Honorable John Lesch  
State Representative  
315 State Office Building  
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St. Paul, MN 55155-1206

Re: SF 2725 Workgroup Report

Dear Legislators:

The attached Executive Summary is provided as directed by the Legislature in 2010 Minnesota Session Laws, Chapter 383, section 6. The Workgroup created by that provision was directed to discuss issues and laws relating to criminal intelligence databases, criminal intelligence data and gang data and databases. As designed by the Legislature, the membership was divided between representatives of citizens and law enforcement. A roster of the twenty Workgroup members and their alternates immediately follows this letter.

The Executive Summary presents the results of the Workgroup efforts. Following approval of the Executive Summary, Workgroup members decided to permit the submission of supplemental reports so that issues and perspectives important to the submitter(s) could be presented. The supplemental reports are presented in the order they were received.

The Workgroup met nine times for more than 33 hours. One of those meetings was devoted to hearing from members of the public about the issues under consideration by the Workgroup. The discussion in many of the Workgroup meetings was contentious. However, Workgroup members always treated each other with great respect. One positive result of these meetings is that they begin to build a general climate of trust that will be absolutely necessary if these very difficult issues are ever to be resolved. We would like to express our appreciation and thanks to each person who participated for their willingness to engage on these important issues. We would also like to thank Ms. Katherine Engler who served as staff to the Workgroup. Without her expert and professional work, this Report and the extensive history that documents the Workgroup's deliberations would not be possible.

Trust emerged as the key issue in the discussions of the Workgroup. Workgroup members from law enforcement felt strongly that they could be trusted to build and operate intelligence systems in a way that was not abusive of the power that is inherent in collecting and creating intelligence data on members of the public. Citizen Workgroup members stated repeatedly that they needed more trust in law enforcement, which could be achieved, in part, by the creation of legal mechanisms to control abuses and to enhance transparency and due process.

As Co-chairs of the Workgroup, it is clear to us that resolution of the numerous and thorny issues associated with the creation and operation of law enforcement intelligence data systems is a goal that can be achieved. However, the Legislature must be willing to give attainment of that goal the time and resources necessary.

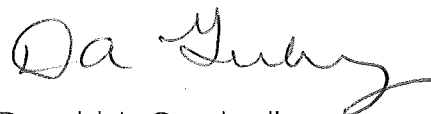
If you have any questions, please contact us. As Mr. Johnson will be retiring from state service on February 22, 2011, the appropriate contact at the Bureau is Ms. Engler. She can be reached at 651-793-2721 or [Katherine.a.engler@state.mn.us](mailto:Katherine.a.engler@state.mn.us).

We would hope that we would have the opportunity to present this Report at hearings of your Committees and to answers any questions.

Sincerely,



David M. Johnson  
Executive Director  
Minnesota Justice Information Services  
Bureau of Criminal Apprehension  
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651-793-1015



Donald A. Gemberling  
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## SF 2725 Workgroup Membership Roster

### **David Johnson, Co-Chair**

Executive Director, Minnesota Justice Information Services (MNJIS)  
Minnesota Bureau of Criminal Apprehension

**Alternate:** Katie Engler, Bureau of Criminal Apprehension

### **Don Gemberling, Co-Chair**

Minnesota Coalition on Government Information

### **James Franklin**

Executive Director, Minnesota Sheriffs' Association

### **Michael Goldstein**

Chief of Police, Plymouth Police Department  
Representing Minnesota Chiefs of Police Association

### **Dave LaBeaux**

Lieutenant, St. Cloud Police Department  
Representing Minnesota Police and Peace Officers Association

**Alternate:** Dennis Flaherty, Executive Director, Minnesota Police and Peace Officers Association

### **Charles Samuelson**

Executive Director, American Civil Liberties Union of Minnesota

**Alternate:** Carolyn Jackson, Lobbying Coordinator, American Civil Liberties Union of Minnesota

### **Mark R. Anfinson**

Attorney at Law  
Representing Minnesota Newspaper Association

### **Professor Nekima Levy Pounds**

University of St. Thomas Law School  
Representing NAACP of St. Paul, Minnesota

**Alternate:** Joel Franklin, Program Manager, Diversion/Behavior Intervention, St. Paul Youth Services

### **Annamarie Hill-Kleinhans**

Executive Director, Indian Affairs Council

**Hector Garcia**

Executive Director, Chicano Latino Affairs Council

**Alternate: David Espinoza**, Chicano Latino Affairs Council

**Lester R. Collins**

Executive Director, Council on Black Minnesotans

**Alternate: Joel Franklin**, Program Manager, Diversion/Behavior Intervention, St. Paul Youth Services

**Kao Ly Ilean Her**

Executive Director, Council on Asian Pacific Minnesotans

**Robert Sykora**

Director of Information Services, State Board of Public Defense

**David Brown**

Hennepin County Attorney's Office

Representing Minnesota County Attorney's Association

**Tom Grundhoefer**

Minnesota League of Cities

Representing Minnesota Association of City Attorneys

**Alternate: Scott Kelly**, Minnesota League of Cities

**Gene Merriam**

President, Freshwater Society/Former State Senator

Citizen Representative

**Alternate: Rich Neumeister**

**Patricia Ferrick**

Special Agent, Federal Bureau of Investigation

**Shellene Johnson**

Program Manager, Minnesota Coalition for Battered Women

**Alternate: Liz Richards**, Minnesota Coalition for Battered Women

**Mona Dohman**

Chief of Police, City of Maple Grove

**Alternate: Spencer Bakke**, Hennepin County Sheriff's Office

**Adam Castilleja**

Senior Special Agent, Minnesota Bureau of Criminal Apprehension

**Alternate: Don Rothstein**, Minnesota Department of Corrections

## Executive Summary SF 2725 Workgroup

### Background

The Legislature directed that a group of 20 individuals meet and:

- discuss issues and laws pertaining to criminal intelligence databases,
- make recommendations on proposed legislative changes for the classification, storage, dissemination, and use of criminal investigative data, including data from other states, and
- make recommendations on guidelines governing usage and collection of criminal investigative data held by law enforcement agencies.

The Workgroup was further directed to balance public safety and privacy interests, state policy according to Minnesota Statutes, section 260B.002, oversight, minimization of discretion, and regulation of the collection of these data, including the individualized criteria for inclusion in a computerized gang database.

See 2010 Minn. Laws, chapter 383, section 6. The meeting agendas, minutes and materials as well as audio recordings of all meetings are available at <http://www.bca.state.mn.us/SF2725.htm><sup>1</sup> or by contacting the commissioner of public safety.

### Recommendations

At its meetings on December 9 and 22, 2010, the Workgroup directed that the following summary of motions be developed and presented to the Legislature. The date of approval is noted after each motion. The direction also provided that votes be included. If no vote is indicated, the motion was approved by voice vote.

- The Workgroup should review the list in the agenda and see what happens. (list is in agenda for Nov. 10; approved Nov. 10)
- The Workgroup should review proposed motions 3 through 23 and note the level of controversy for each. (list is in agenda for Nov. 10; approved Nov. 10)

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<sup>1</sup> As this report is prepared, the Department of Public Safety is working to update its website and those of its divisions. If the hyperlink does not work, please try <http://dps.mn.gov/divisions/bca> and search for "SF 2725."

- The Workgroup recommends that the Legislature fund activities that support compliance with the Data Practices Act, including auditing and training. (Nov. 10)
- The Workgroup recommends that the Legislature provide for research into the federal laws that may classify data received from federal law enforcement agencies and report on where no classification has been provided. (Nov. 10)
- The Workgroup recommends that the Legislature provide for research into the laws in other states that address the collection, classification, use and dissemination of criminal intelligence data and require a report back to the appropriate committees for their use in enacting legislation in Minnesota. (Nov. 10; 8 in favor, 6 opposed)
- The Workgroup recognizes the need of law enforcement to collect criminal intelligence data, subject to agreement on the definition of "criminal intelligence data." (Nov. 10)
- License Plate Reader data are within the scope of the Workgroup's charge. (Nov. 10; 10 in favor, 6 opposed).
- The Workgroup recommends that the Legislature study license plate reader data and its classification. (Nov. 10)
- The Workgroup recommends to the Violent Crime Coordinating Council that the ten gang criteria be evaluated and changed to be as objective as possible, to focus on criminal gang activity, reduce areas of overlap and diminish concerns of racial profiling. (Nov. 10)
- The Workgroup recommends to the Legislature that they provide for enhanced oversight of gang databases. (Nov. 10)
- The Workgroup recommends that the Legislature require a law enforcement agency to take reasonable steps to notify the parent of a minor when the agency has data that associate that minor with gang criteria established by the Violent Crime Coordinating Council unless there is a reasonable probability that the notice will endanger a person or an active criminal investigation. The notice must include a description of the process that the parent or minor can use to inspect or receive a copy of the data and the process for challenging the accuracy or completeness of the data. (Nov. 10)



- The recommendation to implement prevention and/or implementation models was outside the scope of the Workgroup's charge. (Nov. 10)
- The Workgroup recommends that the Department of Public Safety submit to the Legislature every three years a summary report of the results of audits conducted on the gang pointer file from that period of time. (Dec. 9)
- The Workgroup recommends that the Legislature authorize and fund a statewide gang database with appropriate auditing, selection criteria for inclusion, appropriate policies and procedures and appropriate classification of data. After the data in GangNet are converted into the new system, GangNet shall cease to operate. (Dec. 9; 8 in favor, 6 opposed).
- The Workgroup recommends that the Legislature require that databases used by law enforcement to document gang criteria be audited by the Department of Administration for compliance with the Data Practices Act; that the audit function be adequately funded and that adequate funding to train law enforcement in their duties under the Data Practices Act be provided. (Dec. 9)

## State of Minnesota SF2725 Workgroup Supplemental Report

January 7, 2011

Charles Samuelson, Executive Director, American Civil Liberties Union of Minnesota  
Robert Sykora, Attorney, Minnesota Board of Public Defense

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*The criminal justice system works only when people have faith in it. It gains public confidence when its records are open and transparent, balanced by defined limits necessary to protect public safety. The Workgroup struggled to find this balance as it evaluated criminal intelligence gathering plans and gang data proposals that would both reduce transparency and increase peace officer discretion.*

### **A. Criminal intelligence gathering**

The Workgroup accepted that peace officers may need to gather information about people whom they believe are planning but have not yet committed felony-level crimes, and to classify that information as private, non-public or confidential under state law.<sup>1</sup>

Though the Workgroup generically referred to such information as “criminal intelligence data”, it did not agree about how to define such data nor how to protect the public from related abuses of discretion including racial bias. Any definition of criminal intelligence data must limit information gathering to circumstances where serious criminal activity is anticipated. Criminal intelligence data should be gathered only if a trained law enforcement officer forms reasonable suspicion based on articulable facts that a felony-level crime is being planned.

Any abuses of discretion by peace officers gathering information about people who have not committed a crime have an especially destructive effect upon public trust in the criminal justice system. The following safeguards can mitigate abuses of discretion and should accompany any Minnesota law or policy on criminal intelligence data:

1. Confidential criminal intelligence data should be collected only when a trained peace officer believes a felony-level crime is being planned.
2. Confidential criminal intelligence files should be held only for a time limited by statute; if a criminal investigation file is not opened by expiration of that time, intelligence files should lose their confidential status and become available to the data subject then, after further lapse of time, be purged.
3. Criminal intelligence data rules should create a means to correct or remove data errors.
4. Peace officers should share confidential criminal intelligence data only with criminal justice agencies that agree to handle the data using the same retention and purge limits and be subject to audit.

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<sup>1</sup> Minnesota’s Government Data Practices law defines private data as being “accessible to the individual subject of that data”; confidential data on individuals is defined as “data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data.” M.S. §13.02, Subds. 3 and 12.

5. To preserve public trust, trained law enforcement officers working for an external agency such as the legislative or state auditor must regularly perform audits to document compliance with rules affecting collection, retention, sharing and purge of confidential criminal intelligence data.
6. When willful violations of statutory limits are revealed, the law must mandate suspension of the violator's peace officer license.<sup>2</sup>

#### **B. Legislative commission on data policy**


Given the depth and importance of the issues surrounding criminal intelligence gathering and gang database collection, the concerns raised by members of the public, and the remaining unresolved issues, the legislature should appropriate resources to convene a joint legislative commission to do the following:


1. Evaluate the need for changes to laws affecting peace officer collection, maintenance and sharing of criminal intelligence data;
2. Examine the effect on Minnesotans of criminal intelligence and gang data sharing with the federal government;
3. Develop a statewide criminal intelligence and gang data sharing plan to help government agencies develop policies and procedures that comply with state data practices law; and,
4. Determine whether gang databases are an effective tool to combat gang activity.

Members of the commission should be advised by community members, civil rights organizations, public interest groups and law enforcement as they craft a new approach.

Finally, to gather information unavailable to the Workgroup, the Legislative Commission needs the ability to exercise statutory subpoena power.<sup>4</sup>

Respectfully submitted,

  
Charles Samuelson, Executive Director  
American Civil Liberties Union of Minnesota

  
Robert Sykora, Attorney  
Minnesota Board of Public Defense

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<sup>2</sup> See, e.g., M.S. § 626.8432 (POST Board discretion to suspend or revoke a peace officer's license, and M.S. § 626.8431 (automatic revocation upon conviction of a felony).

<sup>4</sup> Peace officer representatives on the Workgroup offered a peculiarly inconsistent pair of arguments: on one hand, they stated that the Minnesota data practices law's silence about criminal intelligence data classification creates, by statutory presumption, undesirable public access to their sensitive intelligence files; on the other hand, when asked to produce examples of such files – even closed ones – they declined, arguing that the MGDPA forbade such release. M.S. § 3.153 allows Legislative Commissions to subpoena information, thereby relieving peace officers of liability for revealing possibly confidential data.

**LAW ENFORCEMENT SUPPLEMENT**  
SF2725 WORKGROUP  
Submitted January 10, 2011

**Submitting Parties:**

David Brown on behalf of the Minnesota County Attorneys Association  
Chief Mona Dohman, City of Maple Grove  
Dennis Flaherty on behalf of the Minnesota Police and Peace Officers Association  
James Franklin on behalf of the Minnesota Sheriffs Association  
Chief Michael Goldstein on behalf of the Minnesota Chiefs of Police Association

**Background**

One of the concerns raised during the 2009-2010 legislative hearings regarding the activities of the Minnesota Gang Strike Force was the maintenance of databases by law enforcement agencies to track the activities of gang members and other violent offenders. A number of groups expressed concern about how information was entered, maintained, disseminated, audited and purged in those databases since there was currently no state law directly addressing these databases. Out of these concerns came the SF2725 Workgroup.

During the Legislative discussions and Workgroup proceedings, law enforcement representatives listened carefully to all stakeholders and were receptive to adopting statewide standards governing these databases and in response put forward a comprehensive proposal that balanced protecting public safety while protecting civil liberties. In addition, law enforcement supported parental notification of juveniles who were suspected of being gang members. Law enforcement also recognized that in order to encourage other states, the federal government, and private entities to provide data to Minnesota law enforcement, our data practices law needed to be amended to protect that “traveling” data once it is received here in Minnesota.

**Summary of Law Enforcement Proposal for Regulating Shared Databases**

The law enforcement representatives on the workgroup recognized the need for a statewide set of guidelines for databases maintained by the hundreds of local law enforcement agencies that may be shared with other agencies. The Law Enforcement Proposal, based upon widely-accepted federal guidelines in 28 CFR Part 23, provided important safeguards that included:

**Establishing standards for entering data:** Currently, there are no Minnesota standards for when data may be entered into a law enforcement database. This proposal creates standards and requires “reasonable suspicion” of involvement in criminal activity. This standard has been adopted by courts in numerous other

areas to regulate when it is appropriate to infringe on privacy to pursue an investigation.

**Protection of civil rights:** Prohibits collecting or maintaining data about the “political, religious, social views, or activities” of any individual or group unless such information directly relates to reasonable suspicion of criminal activity.

**Excluding illegally obtained information:** Prohibits putting information into a database, or maintaining that information, if it was obtained in violation of federal, state, or local laws.

**Limiting access:** Limits dissemination of data to those with a need to know and a right to know to perform a law enforcement activity.

**Safeguards and auditing:** Requires regular, outside auditing of the databases and the purging of information 5 years after it is entered. Under federal guidelines this retention period resets if there has been intervening criminal activity and does not include time where the subject of the data is imprisoned. Although the proposal placed auditing responsibility with the Bureau of Criminal Apprehension, the law enforcement representatives had no objection to audits being performed by the Department of Administration, or other capable state entity as long as the auditors have law enforcement experience sufficient to evaluate whether “reasonable suspicion” of criminal activity is present in a given record.

## **HF 1449 – Classifying Intelligence Data And Regulating Intelligence Databases**

Creating a classification for “Intelligence Data” under the Minnesota Data Practices Act was also a priority for law enforcement. As a result, law enforcement members expressed support for the language in HF 1449 (introduced March 9, 2009) that was drafted with input from the BCA and would modify the data practices act to create a definition of criminal intelligence, require a criminal predicate before entering data, prohibit collecting data for improper purposes, set a retention period (the 3 year period in the bill is too short and should be 5 years) and limit dissemination.

### **Parental Notification**

Law enforcement supported the goal of notifying parents of minors who are identified as possible gang members. Mandatory notification, as adopted by the Workgroup, is problematic because it represents an unfunded mandate to local law enforcement whose budgets are already stretched thin. Nevertheless, specific statutory authorization to notify parents would enable those departments with sufficient resources to reach out and engage parents in the battle against gang involvement – unless such notification would endanger a person or ongoing investigation.

## **Traveling Data**

A major concern of law enforcement is a hole in the Minnesota Data Practices Act that does not currently protect data received from other states, the federal government, or even private businesses. Chilling testimony was presented by the head of security at the Mall of America, Doug Reynolds, during the public hearing. In 2007, the Mall of America was the largest single source of information to the Minnesota Joint Analysis Center (MNJAC) which is tasked with protecting Minnesotans from terrorist attacks. In 2010, a person from outside Minnesota made a data practices request to MNJAC for all data received from the Mall of America. This resulted in disclosure of not only the underlying incidents but also the operational details of how the Mall of America provides security. As a result, the Mall of America no longer shares intelligence information with the Bloomington Police Department or MNJAC.

Though discussed by citizen witnesses and law enforcement representatives on the Workgroup, no formal proposal regarding traveling data was made given the lack of progress on the core issues surrounding databases. Nevertheless, law enforcement supports legislation that would maintain protection for data received from non-Minnesota entities similar to the protections already found in Minn. Stat. § 299L.03, subd. 11 (Data Classification under powers of Director of Gambling Enforcement).

## **Summary**

The law enforcement members of the SF 2725 Workgroup are grateful to the other Workgroup members for their thoughtful consideration of the issues and concerns presented. We are also grateful to the BCA staff for hosting the Workgroup and providing administrative support.

Protecting public safety and safeguarding civil liberties are goals that we all share and finding the proper balance for all stakeholders is a daunting challenge. While we are disappointed that the Workgroup was unable to make more progress on these important issues, we look forward to continuing the conversation in the future.

## Supplemental Report

January 10, 2010

Submitted by: Prof. Nekima Levy-Pounds on behalf of the St. Paul Branch of the N.A.A.C.P. and Lester Collins, Exec. Director of the Council on Black Minnesotans

### **Re: SF2725 Workgroup Recommendation to Create a New Statewide Gang Database**

During the SF2725 Workgroup meeting on December 9, 2010, by a vote of 8 to 6, the Workgroup agreed to recommend that the Legislature “authorize and fund a statewide gang database with appropriate auditing, selection criteria for inclusion, appropriate policies and procedures and appropriate classification of data. After the data in GangNet are converted into the new system, GangNet shall cease to operate.” It was further recommended that GangNet data be converted to the new state database system.

We would like to go on record in opposition of this particular recommendation in light of the concerns that have been raised by communities of color regarding the accuracy and reliability of GangNet Data; allegations of racial profiling being experienced by those who are mistakenly identified as gang members; the myriad harms that are caused to members of the public whose data is stored in gang databases for lengthy periods of time and without a cost-effective and efficient manner to contest erroneous data; and the lack of empirical evidence which shows that gang data collection is an effective means of combating gang-related crimes in Minnesota. Additionally, the proposed language referenced above, leaves a loophole that would potentially allow for the creation of repositories similar to GangNet being established by other jurisdictions, without specific statutory authorization. This is a huge cause for concern for us and the constituents that we represent.

In December of 2009, the St. Paul NAACP partnered with the Community Justice Project of the University of St. Thomas School of Law to produce an independent report which evaluated the use of gang databases in Minnesota and concerns that were raised by members of the public about the collection and storage of gang data in Minnesota and the lack of available mechanisms for contesting said data. In particular, this report challenges the legality of GangNet and whether there is statutory authority to classify data under the Data Practices Act. Many of the questions and concerns that were raised in the report have yet to be answered or resolved.

In lieu of creating a new state database, we strongly recommend that the legislature commission a statewide study of gang data collection in Minnesota that includes national best practices regarding auditing, accountability and oversight of said data, as well as identifying uniform standards in training and reporting amongst law enforcement agencies in Minnesota. The study should also include a critical examination of GangNet’s operating standards prior to December 2009. Further, it should provide answers to questions such as: which persons/entities previously had access to GangNet data; was the data shared with agencies outside the State of Minnesota and if so, which States gained access to the data; was GangNet in compliance with the Minnesota Government Data Practices Act; and whether the data will appear in background checks for employment with a law enforcement or criminal justice agency, or as a result of an application for enlistment in the military. The findings and recommendations derived from this research will provide the community, law enforcement and policy makers with the information needed to develop fair, transparent and equitable procedures for collecting gang data and maintaining gang databases.

The criminal justice system is most effective in holding offenders accountable and responding to victims of crime when there is trust between community members and the players who make up that system—law enforcement, prosecution, the courts, corrections, etc. The many types of data collected through these systems provide critical information for preventing, reducing, and protecting the public from crime—helping to secure that trust.

How and why data is collected is complex. There are historical divisions between law enforcement and community groups around data collection and sharing data across government entities. The complexities of these issues demand an inclusive and thoughtful approach in the creation of data collection and data sharing policies. When addressing the data issues relevant to domestic violence cases, there is a compelling need to balance victim rights, public interests, criminal accountability and law enforcement requirements. With each proposed solution, these competing needs should be assessed and potential consequences evaluated to ensure the safety of victims.

- Take the time to develop and adopt a statewide plan setting forth policies, procedures, standards, and training throughout the state for investigative data collection and sharing. Components of the plan may include all issues pertinent to data collection throughout the criminal justice system, including but not limited to: the electronic format of photographs shared between law enforcement and prosecutors; uniform data collection in compliance with the data practices act; parameters for what information should or should not be transmitted and to whom; and the collection of criminal intelligence data within our state, from state-to-state, from state-to-federal government, and from state-to-Tribal government. Note: 23 CFR 28 merely provides federal funding guidelines and does not create a comprehensive statewide “architecture” for intelligence-led policing.

The impact of any decisions made today is too important to rush as these decisions will shape the future of criminal justice system response and have an impact on the trust between that system and our wider communities. Recognizing the limited time constraints of the SF 2725 workgroup, the best interests of all stakeholders would be better met by investing more time, content expertise and resources for the creation of a comprehensive plan with both criminal justice system and community support.

- Mandate annual reporting. All law enforcement agencies should be required to report annually, any and all database systems they use to collect and store data, whether investigative, gang, or criminal intelligence. To date, no such common knowledge base on law enforcement data collection exists.
- Define an “incident” in accordance with the MN Data Practices Act. Currently in practice there are varying definitions and interpretations of what constitutes an “incident” and varying responses to how an “incident” is handled. For example, whether or not a police report is written on a domestic violence call hinges on different interpretations of “incident” from department to department. There is no uniform understanding of the MN Data Practices Act.