

#### **Duty # 4 Submission**

*Texas Police Chiefs Association – House Select Committee Submission August 18, 2020*

Page 1 of 6

**DATE:** August 18, 2020

**TO:** House Representative Drew Darby

**SUBJECT:** Duty #4 Submission  
House Select Committee on Mass Violence Prevention and Community Safety



Honorable Representative Darby,

Thank you for the leadership and work done by you and all committee members on the important subject of mass violence prevention and community safety. In response to the threat of gun violence in our cities that manifested itself in the mass shootings in El Paso and Odessa, the Texas Police Chiefs Association formed a Violent Crimes Committee in an effort to develop and recommend public policy changes to reduce violence in our communities.

As chiefs we have seen first-hand the trauma created by violent crime in our communities. Addressing this violent crime is complex with no simple solution. For this reason, Texas Police Chief's Association has taken a broad approach to our review. We appreciate the opportunity to participate in this important discussion. As the Committee knows, this topic requires extensive communication. Within the parameters of this written document we would like to highlight some of the most pressing action items. Our goal today and moving forward is to provide subject matter expertise to legislators to help inform the decision-making process. The complete *Violent Crime Legislative Briefing Sheet* is attached that also embodies the philosophical position statements that guided our recommendations.

To purchase a firearm from a gun store a buyer must pass a national instant background check. While many aspects of this federal law are effective, there are areas in need of improvement.

- The State of Texas should become a "NICS Full Point of Contact State." Presently police agencies supply information to the federal system but do not have full access to the very information they provide. As a full point of contact state, Texas peace officers would have access to state information in the field at the point when it is most beneficial.
- The State of Texas should adopt state violations to prevent fraudulent gun purchases and expand state law to prevent NICS prohibited persons from possessing a firearm. As an example: The shooter in the recent Odessa shooting was NICS prohibited, but under state law was not prohibited from possessing a rifle.
- Texas Penal Code 46.06 should be expanded to prohibit a person from allowing a NICS prohibited person access to a firearm. In January 2019, an Arlington Police Officer was shot by a 20-year-old suspect. This suspect was NICS prohibited from buying a pistol from a gun store, yet he was legally able to obtain a gun used to shoot a police officer from his mother.

#### **Duty # 4 Submission**

*Texas Police Chiefs Association – House Select Committee Submission August 18, 2020*

Page 2 of 6

- The State should adopt comprehensive background checks to close loopholes that allow NICS prohibited individuals to purchase firearms online or at gun shows.
- The State should adopt a process whereby a private firearm seller can inquire if a prospective buyer is NICS prohibited from purchasing a firearm. In a recent example, Arlington experienced four armed robberies in 90 minutes. The suspect told investigators that he purchased the firearm via the social media platform Snapchat. This example highlights the challenge of person-to-person sales with no background check or minimum age requirement.

The capacity of the mental or behavioral health system in the state is grossly inadequate and must be addressed. For far too long the criminal justice system has served as the unofficial proxy to an effective mental health system. Clearly not everyone suffering from mental illness represents a danger to society, but we have seen time and time again a common trait of behavioral or mental health problems in suspects of mass violence. We recommend:

- Requiring counties to provide 24-hour access to a magistrate for doctors to execute authorities granted under the Health and Safety Code (573.011) for involuntary psychiatric committals.
- Adoption of a state law which institutes a temporary NICS prohibited status for individuals involuntarily taken to receive in-patient psychiatric services. This temporary status should not exceed 90 days without judicial review.
- Adoption of a state law requiring healthcare officials providing involuntary psychiatric services to notify the local police authority upon the release of an individual for in-community care.
- The creation of a statewide database pertaining to psychiatric referrals by law enforcement, psychiatric committal requests to county District Attorneys, and judgements issued by a magistrate pursuant to any related DA request to improve the continuum of care.
- Require the establishment of mental health courts in all Texas counties.

Finally, bail reform is an important topic to discuss. Recently, in El Paso, a suspect who was out on bond for an Aggravated Robbery repeatedly stabbed a 5-year old girl at a children's playground at a restaurant. Further information showed that the suspect had 20 prior arrests since 2011. A judge had released the defendant on a public recognizance bond on the aggravated robbery charge, which is a first-degree felony, prior to the stabbing incident.

The suspect in the shooting at Texas A&M Commerce was also out on bond. The suspect in this case had been arrested the week prior for Assault – Family Violence and was released from custody after posting a \$15K bond and receiving an Emergency Protective Order intended to protect the victim that was later shot and killed.

**Duty # 4 Submission**

*Texas Police Chiefs Association – House Select Committee Submission August 18, 2020*

Page 3 of 6

On Dec 12, 2019, a fugitive from justice in Dallas County was arrested for warrants that included two counts of aggravated assault with a deadly weapon, probation violation for burglary and assault. Almost immediately after being released from jail the suspect committed another aggravated assault with a deadly weapon and is currently at large.

These examples demonstrate that we need your help. There is a balance that needs to be achieved that supports a fair bail system where an indigent defendant is not held in jail punitively due to an inability to post bond and a bail system that protects the rights of victims and the community and bolsters public safety. TPCA u,

- The State adopt a statewide database, such as TLETS, to centralize inquiries for bond conditions on released individuals awaiting trial; and,
- The State adopt a new state law that creates criminal penalties for violation of bond conditions.

It is imperative that while trying to achieve a proper balance on bond reform issues that we also focus on the 6<sup>th</sup> amendment, which guarantees the right to a speedy trial by improving the capacity of the courts system.

As our elected leaders in Texas, we appreciate your important role in partnering with law enforcement to make our communities safe. TPCA appreciates your service to the great State of Texas and stands ready to assist in any manner possible as you deliberate our public policy options to address violent crime.

Respectfully submitted,

TPCA President Gene Ellis  
Chief and Assistant City Manager, Belton, Texas

**ATTACHMENT:** Texas Police Chiefs Association - Violent Crime Legislative Briefing Sheet



## **Texas Police Chiefs Association**

### **Violent Crime Legislative Briefing Sheet**

#### **Introduction**

In response to the nationwide impact of violent crime on communities, including acts of mass violence, the Texas Police Chiefs Association (TPCA) has been exploring opportunities to decrease these acts by proposing effective public policy solutions. This legislative briefing sheet provides the view of the Texas Police Chiefs Association on various aspects related to violent crime. As TPCA continues work towards this topic, legislative briefing points will be updated. This report also takes into consideration information provided during public hearings, legislative commission activity, and the Texas Safety Action Report issued by Governor Greg Abbott.

#### **TPCA is committed to the following philosophical position statements:**

- #1. TPCA recognizes, and is unequivocal in its support for, the rights and privileges of individuals established in the U. S. Constitution, and specifically, the Second Amendment right of gun ownership for law abiding individuals.
- #2. TPCA recognizes as a major concern, however, the ability of dangerous people acquiring and using firearms for illegal and sometimes deadly purposes.
- #3. TPCA recognizes that Texas Peace Officers already have intervention authority to remove firearms from respondents subject to domestic violence protective orders and those with mental illness found to be a substantial risk of serious harm to themselves or others unless immediately restrained.
- #4. TPCA recognizes that only a small percentage of individuals who have mental illness or are seeking assistance for behavioral health related issues represent a risk to society.
- #5. TPCA recognizes the importance of data collection and its beneficial effect in assisting law enforcement, legislators, and the public in navigating the byzantine expanse of mental health challenges in a state the size of Texas.
- #6. TPCA supports a fair bail system where an indigent defendant is not held in jail punitively due to an inability to post bond, but one that also balances the rights of victims and other law abiding citizens not to be negatively impacted by re-victimization or increased recidivism.

#### **Duty # 4 Submission**

*Texas Police Chiefs Association – House Select Committee Submission August 18, 2020*

Page 5 of 6

#### **National Instant Background Check System Recommendations:**

- Aggressive prosecution by the federal government for violations of the National Instant Criminal Background Check System (NICS).
- Aggressive prosecution by the State of Texas for proposed new state violations related to the National Instant Criminal Background Check System (NICS) and expansion of State of Texas penal code laws to prevent NICS prohibited persons from possessing a firearm.
- Adoption of a state law that prohibits a person from knowingly allowing access to a firearm by a NICS prohibited person.
- Adoption of a state instant background check database by becoming a “NICS Full Point of Contact State.”
- Adoption of comprehensive background checks to close loopholes that allow prohibited individuals to avoid such checks by purchasing firearms online, or at gun shows.
- Adoption of State of Texas law to prohibit a business to pose as an individual for the sole purpose of circumventing federal firearm dealer license requirements.
- Development of a statewide process whereby a private firearm seller can inquire if a prospective buyer is NICS prohibited from purchasing a firearm.
  - TPCA does not recommend a private firearm sales database be maintained.
  - TPCA does not believe firearm identifying information is required, or necessary, in determining if a person is NICS prohibited.

#### **Mental (Behavioral) Health Related Topics:**

- Require counties to provide 24-hour access to a magistrate for doctors to execute authorities granted under HSC 573.011. This service should allow authorized health care officials to seek magistrate approval electronically.
- Adoption of a state law which institutes a temporary NICS prohibited status for individuals involuntarily taken to receive emergency psychological services. This temporary status should not exceed 90 days without judicial review.
- Adoption of a state law requiring healthcare officials providing involuntary psychiatric services to notify the local police authority upon the release of an individual for in community care.
- Improve visibility for public safety on the disposition of an emergency detention under Texas Mental Health Code 573.
- Improve communication and follow-up between a mental health facility’s preliminary evaluation of an emergency detention and the need for Court Ordered Mental Health Services to provide a continuum of care.
- Collection in a statewide, searchable database of information pertaining to psychiatric referrals by law enforcement, psychiatric committal requests to county District Attorneys, and judgements issued by a magistrate pursuant to any related DA request.
- Require establishment of mental health court capacity in all Texas counties.

**Duty # 4 Submission**

*Texas Police Chiefs Association – House Select Committee Submission August 18, 2020*

Page 6 of 6

**School Safety and School Threat Assessments:**

Texas has required a Threat and Risk Assessment be conducted on students who are identified as a threat risk. Under the current system, a student who leaves one district after an assessment is highly unlikely to have the results shared with the next district the student attends. TPCA recommends:

- A central database created by the Texas School Safety Center (TSSC) or Texas Education Agency (TEA) that houses student threat assessments that includes information from public, private, charter, and academy schools.
- A student's threat assessment be entered into the database within ten days of completion.
- The reporting requirement be modeled on the Texas Superintendent report requirements adopted by TEA on September 1, 2019. (TEC 22.093)
- A student's Culminative Data Folder (required to move with the student) be required to alert a subsequent school district attended by the student to the database's threat assessment.
- Select school administrators and sworn police officers be able to obtain student threat assessment documentation through the database.
- The database system purge student data when the student turns 21 years of age.

**Bond Reform Challenges:**

- Statistically validated risk assessment tools be utilized by the court system before arrestees are offered bail release pending trial.
- Bail should provide some level of protection for the victim as a requirement of release.
- Bond revocation for arrestees who fail to maintain the requirements of their release.
- Bond conditions be accessible via a database to sworn peace officers.
- Violation of bond conditions should be criminal offenses and arrestable by sworn peace officers.

**Texas Police Chiefs Association****Violent Crime Committee**

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