

Testimony Prepared for:
House Select Committee on Mass Violence Prevention and Community Safety

The topic (#4): "Evaluate the ongoing and long-term workforce needs of the state related to cybersecurity, mental health, law enforcement and related professionals"

I would like to list selected concerns with some of the proposed law enforcement and related professional proposals. Law Enforcement and Mental Health workers cannot be expected to keep us safe. The Supreme Court has repeatedly held that the police have no duty to protect you and that the government only has a duty to protect persons who are “in custody”. Rather than trying to grow the workforce to deal with increasing crime and civil unrest, the safest and most cost effective way to keep a community safe is to enable and encourage honest citizens to protect themselves. The advantage of this approach is that it doesn’t cost the State anything in workforce costs and greatly increases the number of potential first responders to a violent act. The following suggestions will greatly improve public safety and will serve as a deterrent to criminals intent on harming innocent people.

Gun Free Zones

It’s already against the law to assault or kill someone. People who are willing to break the law to cause harm have no problem breaking the law and carrying a gun into a place where it’s illegal. Criminals get the upper hand when honest citizens and victims are disarmed. Because of this, Gun Free Zones are actually much less safe than non-restricted areas. FBI data shows that 97.3% of mass shootings from 1950 through April 2018 have happened in Gun Free Zones. A sign doesn’t stop a criminal. It just announces that there will be no resistance at that location because law-abiding citizens will not be armed.

Gun bans don’t stop criminals. They stop law-abiding citizens from having the tools to confront the criminals and save innocent life. Criminals will always obtain firearms someway. I know that right now the Texas prison system has been on lockdown for months, but many inmates are still getting illegal drugs. If we can’t keep contraband away from prisoners on

lockdown, then there is no way in a free society that we can keep guns out of the hands of someone who is intent on committing murder.

The media is quick to say how bad guns are after a mass casualty incident, but they never put it into perspective. An Obama era CDC study in 2013 found that almost all national survey estimates indicate that **defensive** gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from a low of about 500,000 to more than 3 million. In addition, there are consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies.

Even the United States Court Of Appeals for the Ninth Circuit stated in their California magazine ban ruling recently filed August 14, 2020 “The parties and amici disagree on the number of times that guns are used for defensive purposes, offering anywhere from 240,000 to 2.5 million times a **year**. That means that an average of 657 Americans – and perhaps up to 6,849 Americans – use guns to defend themselves **every single day of the year**. We take notice of this fact in recognizing the fundamental right of self-defense.”

Constitutional Carry

I am a seventy year old disabled Viet Nam Era veteran with nerve damage to my legs. I am no longer strong enough nor fast enough to fend off or run away from an attacker. A firearm evens the odds at defending myself or my loved ones from an attacker. The same is true for most females who are usually smaller and weaker than most male attackers. A firearm is the great equalizer against a bigger and stronger assailant.

However, protecting yourself with a firearm can be a problem for poor folks which include students. Costs for a License to Carry in Texas make it hard for many to afford to pay for the License, the training class, and the cost of finger printing, much less the cost of a firearm. Texas needs to join over thirty other states in enacting Constitutional Carry. Constitutional Carry makes people safer. The five states in 2013 that allowed concealed carry without a permit had much lower murder and violent crime rates than the five jurisdictions with the lowest permit rates. The murder rate was 33 percent lower in the states not requiring permits and the violent crime rate was 32 percent lower.

Constitutional Carry will also repeal Jim Crow-era prohibitions (the current law prohibiting handgun carry dates to the mid 1860's with its racist roots). Constitutional Carry

does not allow prohibited people (such as gang members and felons) to carry handguns. It also maintains the licensing process as an option for those who choose to obtain a License to Carry. With civil unrest in many areas and some police budget cutting, it is important for honest citizens to be able to protect themselves. Adding Constitutional Carry removes yet another barrier for citizens to protect themselves and exercise their Constitutional rights.

Jeff Temple and Mark Barden suggested in their responses that red flag laws and expanded background checks would be a way to prevent crimes, but looking at the problems presented in implementing these solutions, they would certainly cause more harm instead of helping. The following are some of the major problems with implementing these measures.

Red Flag Laws

There is no way Red Flag Laws can be made Constitutional. No matter how much lipstick you put on that pig, it is still a pig and unconstitutional. Red Flag Laws violate the First Amendment: freedom of speech, the Second Amendment: keep and bear arms, the Fourth Amendment: probable cause (rumors and reading someone's mind are not probable cause), Fifth Amendment: due process – due process after the fact is not due process, the Sixth Amendment: right to a fair trial, and the Seventh Amendment: trial by jury. There are already laws on the books that can be used if a person is presenting questionable behavior.

Existing Texas Law includes:

- Magistrate's Temporary Protective Order (Texas Code Crim. Proc. 17.292) after an arrest for an offense involving family violence or other specified items
- Family Violence Protective Order (Texas Family Code, Title 4) – when family violence has occurred and is likely to occur again
- Mental Health Commitment (Texas Mental Health code, Title 7) – Clear and convincing evidence that the person is a danger to self or others (specific requirements)

A secret court based on someone's complaint is easy to abuse by someone who wants to "get" someone or a person who is afraid of guns. It can impose a tremendous burden on a citizen being taken to court when no law has been violated. The burden of time, money, and life impact of mounting a court defense can be steep. If the person is found **innocent**, it can still cost more

than \$10,000 in attorney and court fees and over a year in some areas to get confiscated firearms returned. For many people that is a huge cost and wait that effectively denies a citizen his Constitutional right. And that is assuming the person who was reported was not killed in a predawn raid – which has happened to Gary Willis, a resident of Ferndale, Maryland in November 2018. Our justice system is supposed to prosecute and punish people who have **broken an actual law**, not those who are **thought** to be likely to commit a crime in the future.

Instead of only looking at law enforcement based solutions, look at reducing barriers for everyday Texans to legally carry a firearm. This also includes teachers and volunteers in schools allowed to carry a firearm, if they choose. Look for solutions that increase safety without reducing freedom.

Background Checks

I oppose background checks because they are unconstitutional infringements of the rights protected by the Second Amendment and are fraught with problems.

Background Check Mistakes

Background checks do not stop criminals from getting guns. Most background check denials are mistakes. The National Instant Criminal Background Check system is already a mess. Nearly 95% of denials are false positives. So, expanded checks are more likely to overwhelm the system and keep guns away from the law-abiding more than from criminals.

Background Checks Hurt Minorities

Minorities are wrongly denied disproportionately to others. People are often denied because their names sound or look similar to names of actual criminals who are banned from guns. These mistakes affect certain racial groups more than others. Hispanics are more likely to share names with other Hispanics; the same is true of blacks. Because 30 percent of black males have criminal records that prevent them from buying guns, law-abiding African-American men more often have their names confused with those of prohibited people.”

Background Checks Hurt Veterans

Over 250,000 veterans who need help handling their finances were added to NICS even though their disabilities likely shouldn't preclude gun ownership.

Background Checks Create A Gun Registry.

Requiring background checks for private sales cannot effectively be accomplished without creating a gun registry. It will be very hard to impossible to monitor compliance without a registry that lists every gun and owner. Gun owners will stand strong against any move toward a gun registry because a registry is the first step toward confiscation.

Background Checks Don't Stop Criminals

Addressing mass murders by expanding background checks wrongly suggests gun ownership is the problem when evil hearts are the problem. Even if prohibited persons are caught lying on the firearm purchase form (ATF Form 4473 - Firearms Transaction Record) there are almost no prosecutions. So even if convicted felons are identified trying to buy firearms illegally, there is rarely any punishment; therefore no deterrent. Criminals will still find ways to get guns: straw purchases, other illegal purchases, stealing, even stealing from the police or military – or they'll use other weapons for their crimes.

These suggestions, backed up with thorough research not based on emotion or predetermined outcome by legal experts, will go a long way in increasing the safety of all Texans while not infringing on their Constitutional rights.