

Regarding Duty No. 4 of the Texas House of Representatives Select Committee on Mass Violence Prevention & Community Safety.

My name is Richard Hayes, I am an attorney and partner with the law firm of Walker & Taylor in Houston Texas. I have dedicated my practice to firearms law education, protecting the civil right of self-preservation, and the Second Amendment.

Thank you for the opportunity to share my thoughts on Duty No. 4. In short, **I believe tools for law enforcement already exist and additional training on these tools should be the focus of this committee's inquiry. Additionally, demands to criminalize acts that are already illegal serve only to create easily-exploited ambiguities in the law, a false sense of accomplishment, a false sense of security, violate Texans' civil rights of self-preservation and defense, and do not promote public safety.**

As tempting as it may be to apply a legislative "solution" to tragic acts of violence, a new law that targets and burdens gun owners is not the answer. Rather, there exists current legislation that could effectively be applied.

This committee knows, criminals do not follow the law. By contrast, for example, license to carry holders are one of the most responsible and law-abiding demographics in our state— data collected by the Texas Department of Public Safety shows them, as a group, committing crime at approximately 1/5th the rate of Texas peace officers— another very law-abiding group. As of December 31st, 2019, the [latest number available](#), there are 1,443,195 LTC holders in the State of Texas.

In my practice, I have seen Texans save their lives and the lives of others, on an almost daily basis; thanks in part to the Concealed Handgun License law, now License To Carry, that went into effect January 1st, 1996. Many of these defensive gun uses are not recorded or available in any statistical data because a crime was stopped before it was committed.

Interference with the fundamental civil right to self-preservation and defense is a not feature of a free people. Furthermore, the imposition of new laws only affects those who follow the law (not criminals). **My recommendation for this committee is to enforce the laws that already exist and to not further burden the most law-abiding people in our great state.**

Texas law currently contains many provisions in the Code of Criminal Procedure, Family Code, Health & Safety Code, and Penal Code, that can be utilized to preempt and stop destructive behavior. Further, these avenues are protective of due process rights as they

are administered through the criminal justice system.

For example, under the Texas Penal Code: the harassment law (TPC 42.07) prohibits 7 different types of conduct; the terroristic threat law (TPC 22.07) prohibits 6 different types of threats, and the disorderly conduct law (42.01) prohibits 11 different acts.

Further, as a catch-all, Texas Penal Code Section 38.15, Interference With Public Duties, allows a police officer to arrest anyone who, with criminal negligence (the lowest level of mental culpability), interrupts, disrupts, impedes, or interferes with a police officer in the discharge of any official duty. In my experience, I have seen this used to arrest many individuals who were engaged in disruptive, but not otherwise criminal activity.

To make an arrest, police must meet the standard of probable cause. However, I have heard some say that the threshold is too high— leaving those in law enforcement with insufficient tools. “Probable cause” is a suspicion based on reasonable and trustworthy information that a particular person has committed or taken an action that is more than mere preparation to commit a particular crime. At this standard, the police need only show that the person probably committed, is committing, or about to commit a crime.

The standard of probable cause is intended to ensure the most basic and fundamental due process rights are preserved and I would exercise extreme caution when proposing or attempting to apply a lower standard to an individual’s liberty.

With that said, are our law enforcement workforce has tools in place, rarely used, that operate below the standard of probable cause (reasonable suspicion) that may be used to prevent destructive behavior by persons with mental illness. This is for situations where police feel that they do not have probable cause to arrest an individual for a crime. I have spoken to many prosecutors and police officers who are wholly unaware of this provision of the law.

Texas Health and Safety Code Chapter 573, only requires a law enforcement officer have a reasonable belief that a suspect: (1) has a mental illness and (2) because of that illness are a substantial risk of serious harm to any person unless immediately restrained, and (3) there is not sufficient time to obtain a warrant.

This long-standing law not only provides for the police apprehension of persons who are believed to be a danger to themselves or others, but it also provides for the seizure of their firearms. On top of that, the Chapter also contains a process whereby a civilian may file an application with a court for the emergency detention of individuals in need of mental health services.

Included under this law is a physician’s examination of a person who is brought to a

mental health facility, which could result in them being admitted to a facility and ordered to receive inpatient mental health services. Such an involuntary commitment satisfies due process and triggers the federal law prohibition from the purchase and possession of firearms and ammunition.

That is why— if new legislation is not about criminal behavior, and if it does not address mental health issues, then it defies common sense and should not be supported. Any legislation that would deprive someone of their Second Amendment rights in the absence of being convicted of a crime or being found mentally incompetent should be opposed, as we already have two judicially approved processes for these circumstances that are protective of individual due process rights.

My recommendation to this committee is to review existing solutions which may be acted upon immediately. Enforce criminal laws already on the books and **provide training and education to our law enforcement agencies on Texas Health and Safety Code Chapter 573**. This training could legitimately stop potential threats, will serve to prevent future instances of mass violence and tragedy, and preserves due process.

Thank you for your time,

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