



Texas Gun Sense Public Testimony  
To the Select Committee on Mass Violence Prevention & Community Safety  
Gyl Switzer, Executive Director

*Designated Party Comments: Duty #1, Examine options for strengthening enforcement measures for current laws that prevent the transfer of firearms to felons and other persons prohibited by current law from possessing firearms*

Texas Gun Sense (TGS) is a nonpartisan nonprofit advocating for common-sense, evidence-based policies that reduce gun injuries and deaths.

TGS recommendations relevant to Duty #1 in regard to gun violence re strengthening current laws:

**Priority: Disarming domestic abusers** is possible under current law as some jurisdictions in Texas have demonstrated. Other jurisdictions in Texas could certainly follow suit. Disarming domestic abusers would help prevent both personal and mass violence gun deaths. The Texas Council on Family Violence will address this issue in more detail. TGS supports disarming domestic abusers as a way to significantly impact gun violence in Texas.

**Priority: Disarming other persons who become ineligible** to own firearms because of crimes committed or other prohibitions

*TGS recommendations relevant to Questions to Designated Parties, Duty #1*

**Priority: Universal background checks** enhance public safety by keeping guns out of the hands of dangerous people such as, felons, domestic abusers, and fugitives from justice. Texas can save lives with expanded background checks.

- Only gun dealers with a Federal Firearms License (FFL) are required to do a background check before selling a gun in Texas, not private sellers. Texas has NO state requirement for more comprehensive background checks when purchasing a

- firearm. Therefore, persons prohibited from owning firearms can easily obtain a gun - on the internet, at a gun show, even from a private seller out of the trunk of a car.
- In states like Texas with no state required background check, research published in the *Annals of Internal Medicine* showed that [57%](#) of private gun sales were done with no background check.
  - Around [80%](#) of all firearms acquired for criminal purposes are obtained through transfers from unlicensed sellers. Including the purchase of his firearm by the Odessa/Midland mass shooter.
  - Texans overwhelmingly ([79%](#)) support universal background checks.
  - Background checks are instant and generally require only a few minutes to process. By federal law, if the check is still not complete after three days, the sale, by default, may proceed.
  - While the background check system would benefit from improvements, it continues to play a vital role in public safety. Since 1994, background checks have [blocked sales](#) to more than two million prohibited gun buyers nationwide and undoubtedly make Texas safer.
  - Many gun shows already have FFL dealers who do background checks. All sellers at gun shows could perform background checks. In fact, firearm sales without a background check hurt the FFL dealers who must do the checks.

### **Priorities Related to Universal Background Checks**

**Prohibit “lie and try”**—lying on a background check. Lying on a background check form is a federal crime but is almost never enforced. Making lying on a background check prohibited by state law would allow better enforcement by local officials.

**Prohibit straw purchase of guns**—purchasing guns for someone other than yourself. Straw purchasing is a federal crime but is almost never enforced. Making straw purchasing a prohibited by state law would allow better enforcement by local officials.

**Priority: Enact an Extreme Risk Protection Order law** to save lives in Texas. With an Extreme Risk Protection Order (ERPO) law civil court judges will have the authority to address the needs of individuals and communities by temporarily separating people from their firearms in a homicidal or suicidal crisis.

- In many instances of gun violence, family members or friends noticed warning signs that shooters were at risk of harming themselves or others. In response to these tragedies, 19 states and the District of Columbia have enacted lifesaving ERPOs that can prevent gun tragedies before they occur.
- Texas law does not provide a clear legal authority to restrict access to guns before a tragedy occurs, even when it is clear that an individual is at risk of suicide, or harm to others. ERPO laws provide a legal means, using a civil process, to prevent tragedies.
- ERPO laws empower families, household members, or law enforcement officers to petition a civil court judge to temporarily separate a person from their firearms before they may commit violence.
- States have passed different versions of ERPOs. Texas can create a Texas ERPO that keeps Texans safe.

#### Details on life-saving ERPO components:

- ERPO requests must include substantial evidence of potential lethal harm before the civil court judge can order one. Also, there is a penalty for any false statements made by petitioners.
- The subject of an ERPO hearing, the respondent, can argue against the ERPO and have an attorney represent them.
- When the respondent is able to demonstrate diminished risk to the court, their access to firearms can be reinstated, after a background check as appropriate
- Courts in a few states have held that their ERPO laws in particular do not violate the Constitution.
- Extreme Risk Laws are modeled on the long-standing domestic violence protection orders (in place in all 50 states) and involve both a court hearing and clearly defined due process protections.
- ERPOs are a civil proceeding so respondents who comply with the requirements will not be prohibited from owning guns.
- ERPOs are supported by 68% of Texas voters, including 53% of Texas Republicans.

#### ERPO Saves Lives:

- Connecticut passed a Red Flag Law. Its firearm suicide rate decreased by 14%
- Indiana's ERPO was associated with 7.5% fewer gun suicides over the decade following the law's passage in 2005.

- Case studies from across the country demonstrate how ERPO's have assured safety when a person was homicidal and had access to firearms. There are published examples of lifesaving uses of ERPO in averting homicides from **Oregon, as well as** California, Maryland, Florida, Washington. Many ERPO bills have been passed in only the past couple of years.
- ERPOs have had bipartisan support in states that passed them.

For an outline of how an ERPO law could be Texas-ized, see Texas Gun Sense [outline](#).

**Priority: Safe storage** of guns prevent gun tragedies including homicides, suicides, and unintentional injuries

### **Priorities Related to Safe Storage**

Continue and increase funding for the Texas Department of Public Safety for a **Safe Firearm Storage Campaign**. In the 2019 state budget, the legislature appropriated \$1 million for the biennium for the campaign. In a huge state like Texas, public health messaging must be better funded to save more lives.

**Require the reporting of lost and stolen guns.** Governor Abbott recommended in his [May 2018 report](#) that Texas should require the reporting of lost and stolen guns. Per the Governor, "Stolen guns pose a significant risk to community safety. Whether stolen from a gun store or an individual gun owner, these guns often head straight into the illegal underground gun market, where they are sold, traded, and used to facilitate violent crimes."

**Strengthen the Texas Child Access Prevention (CAP) law.** Governor Abbott recommended in his [May 2018 report](#) that the Texas CAP law should be strengthened in three ways: include 17 year olds in the law; clarify the "readily dischargeable" statutory definition; and increase the penalty level to a 3rd degree felony when access results in death or serious bodily injury.

### **Some Other Laws that Will Save Lives in Texas**

- Prohibit ghost guns. The term "ghost gun" describes homemade weapons devoid of serial numbers or other identifying markings that enable them to be tracked to their

maker, seller, or original owner. Ghost guns are dangerous for a number of reasons including the fact that they present an easy way for criminals to get guns`.

- Require gun sellers to securely store guns, when open and when closed for business. There are no federal or state laws requiring safe storage.
- Stop pre-emption of local guns laws. Texas has urban, suburban, rural and frontier counties. Local governments in an urban center like Houston should have different regulations for guns than a frontier county with less than seven people per square mile.
- Prohibit open carry of long arms. The El Paso shooter walked calmly across the Walmart parking lot openly carrying an AK-47 style rifle. He did not commit a crime until he opened fire.
- Consider how safety is impacted by assault style weapons, high capacity magazines, bulk firearm purchases and whether restrictions/prohibitions should be considered.
- Fund an in-depth, intervention-oriented study on gun-related intentional and unintentional deaths and injuries. The more Texas knows about The Who, what, where, when, how of gun injuries and deaths, the better laws can be targeted to solutions.

**Note:** Giffords Law Center is an excellent source for federal and state laws as well as comparisons among states and general information about gun violence prevention.

Thanks to Chair Darby and the Members of the House Special Committee on Mass Violence Prevention & Community Safety for the invitation to provide Designated information.

TGS looks forward to working with the Committee and the entire Texas Legislature to work through details of the lifesaving measures above.

TGS knows that progress can be made to saving lives from gun violence in Texas and we look for your legislative leadership in this.