



# Testimony

## Testimony Before the Texas House Homeland Security & Public Safety Committee Conservative Gun Violence Prevention Policies *Protecting students, teachers, and communities*

by Derek M. Cohen, Ph.D., Vice President of Policy

The horrific school shooting in Uvalde, Texas, illustrated the potential for cascading failures to result in the tragic deaths of 21 Texans. The current debate presents us with the opportunity to stop several of these failure points from materializing without the need to restrict law-abiding citizens' Second Amendment rights. We propose the following five solutions to help keep Texans safe and free:

### **Proposal #1: Liability for Inaction**

Perhaps the single most devastating failure in the response to the shooting was the inaction of the on-scene leadership, failing to subdue the gunman while children and adults lay dying on the other side of an unlocked door.<sup>1</sup> This shocking lack of urgency belies not only the lack of training the Uvalde CISD Police Department received in crisis situations but also the lack of any extrinsic motivation to bring the situation to a swift resolution by those in charge. Worse, under the various immunities afforded government officials, the grieving family members will never see their day in court.

To remedy this, Texas should create a limited doctrine of liability for police response during mass casualty events where—once a response has been initiated—failure to abide by established standard operating procedure in bringing the incident to a swift resolution automatically waives any immunity that may apply.

### **Proposal #2: Restructuring the School Guardian Program**

In Texas, individuals are prohibited from carrying on school campuses except in very few circumstances—including forming a contract with the school. Roughly half of all school districts do not use any form of armed non-law enforcement personnel, with one third reporting the use of some armed civilians.<sup>2</sup> Despite the opportunity presented by this program, many district and campus officials simply refuse to allow individuals with these enhanced credentials to protect the schools.

Rather than requiring express permission from reticent district and campus leadership, individuals who seek this additional clearance and training should not be penalized for carrying on a school's campus. Leadership should engage in good-faith planning and strategizing with internal and external volunteers who wish to make school more resistant to violence.

### **Proposal #3: Mandatory “Lie and Try” Reporting**

In 2021, the Texas Legislature passed SB 162, the state's first anti-“lie and try” legislation. Whenever an individual seeks to buy a firearm from a federally licensed firearm dealer (FFL), the buyer must complete an ATF 4473 form. Within, the buyer affirms under penalty of perjury that they are to be the sole recipient of the weapon and that they are not a state or

<sup>1</sup> Chasnoff, B. (2022, June 18). Police never tried to open door to classrooms where Uvalde gunman had kids trapped. *San Antonio Express-News*. <https://www.expressnews.com/news/local/article/Uvalde-classroom-doors-17251116.php>

<sup>2</sup> Texas School Safety Center. (2021). *District audit report: Findings on safety and security in Texas school districts*. <https://locker.txssc.txstate.edu/cfa9cdc12a7a1a2d662f68d1c91b1a21/2017-2020-DAR-Report.pdf>

federally designated “prohibited person.” While not all relevant, disqualifying information is included in the National Instant Criminal Background Check System (NICS), a great deal of adjudicated criminal history and official mental health diagnoses is—information that may signal an individual’s ineligibility to own or possess firearms.

SB 162 created parallel jurisdiction Texas law enforcement to investigate and refer for felony prosecution willful misrepresentations made on the ATF 4473. However, there is no mechanism for incidents of malfeasance to be reported to the police. Texas should require that all FLLs, in the event of a denial or timed-out delay resulting in a sale, be referred to law enforcement for further investigation.

#### **Proposal #4: Juvenile Criminal History**

In Texas, most juveniles who were committed to the Texas Juvenile Justice Department are eligible to have their records sealed upon discharge. Sadly, this information rarely makes it into the national background check system, allowing behavior that could qualify an individual as a prohibited possessor as an adult being kept from the database. Texas should continue to allow for juvenile records to be sealed in such a manner but include all such conduct in reporting to the NICS system.

#### **Proposal #5: Require the Use of Local Law Enforcement in Schools**

In 1995, the Texas Legislature passed the “Safe Schools Act” (SB 1) in response to federal mandates. This substantial reworking of the Texas Education Code authorized independent school districts (ISDs) to commission peace officers, wholly subordinate to the district’s board of trustees, with the department’s chief reporting directly to the superintendent.<sup>3</sup> The legislation also permits the school district to enter into a memorandum of understanding (MOU) with local county or municipal law enforcement, where the latter party provides dedicated law enforcement coverage to the district and/or specific campuses.

Taxonomically, this manifests in two types of law enforcement officers stationed in schools: “school district peace officers” or “school-based law enforcement (SBLE)” (officers employed by ISDs) and “school resource officers (SROs)” (those employed by local law enforcement). Current law draws no distinction between a licensed peace officer and SBLE/SROs. However, due to the unique role of SBLE/SROs, both must complete a Texas Commission on Law Enforcement-approved active shooter training<sup>4</sup> and an additional 16 hours of training<sup>5</sup> within the first 180 days of their assuming this role.

The problem with SBLE is twofold. First, ISD police departments are often the smallest of the overlapping jurisdictions. This lack of scale keeps officers from being able to take advantage of external training and development opportunities, specifically with tactical applications. Second, school, city, and county revenues come in large part from ad valorem property taxes. This means that a homeowner is being taxed up to three times to provide the same general service. ISD police departments, while not a core function of education, cannibalize the taxpayer’s ability to fund the same services in city and county departments better able to provide a crisis response. Accordingly, Texas should no longer allow for ISDs to create and run their own police departments and rely upon county or city personnel under MOUs for contract law enforcement.

---

3 Texas Education Code 37.081.

4 Texas Education Code 37.0812.

5 Texas Occupations Code 1701.263.

