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THE EDUCATIONAL FUND  
TO STOP GUN VIOLENCE



## Risk-Based Firearm Policy Recommendations for Texas



# **Risk-Based Firearm Policy Recommendations for Texas**

**Educational Fund to Stop Gun Violence  
September 2016**

## ***Additional Resources:***

Consortium for Risk-Based Firearm Policy State Report:  
*Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy*  
<http://www.efsgv.org/wp-content/uploads/2014/10/Final-State-Report.pdf>

Educational Fund to Stop Gun Violence: <http://www.efsgv.org/>

Texas Gun Sense: <http://www.txgunsense.org/>

**The Educational Fund to Stop Gun Violence (Ed Fund)** is a 501(c)(3) organization that makes communities safer by translating research into policy. The Ed Fund achieves this by engaging in:

**Policy Development:** The Ed Fund is the gun violence prevention movement's premier research intermediary and founder of the Consortium for Risk-Based Firearm Policy, a group of academics and practitioners who collaborate to develop innovative recommendations for policymakers.

**Technical Assistance:** The Ed Fund supports policymakers and gun violence prevention advocates by drafting and implementing groundbreaking, evidence-based policy.

**Policy Advocacy:** The Ed Fund influences the policymaking process by lobbying, educating policymakers, and disseminating our message through media advocacy and outreach.

**Community and Stakeholder Engagement:** The Ed Fund works with community members and stakeholders to bring their voices to policymakers and create an impacted communities voter bloc trained to advocate for policies that stop gun violence.

**The Consortium for Risk-Based Firearm Policy (Consortium)** includes the nation's leading researchers, practitioners, and advocates in gun violence prevention and mental health. The Consortium seeks to...

- Synthesize and translate existing research and the best available scientific evidence to develop gun violence prevention policy recommendations, within constitutional limits, to address access to firearms by persons who are at an elevated risk for committing inter-personal violence or suicide;
- Inform relevant stakeholders of these policy recommendations by developing educational materials, including reports and issue briefs; conducting public forums; and submitting expert testimony.

**Texas Gun Sense** works to reduce gun violence by promoting effective gun laws through research and public awareness.

What we do:

Conduct research and analysis – Texas Gun Sense works to develop fact-based, Texas-specific research on gun policy, both proposed and current.

Increase public awareness– We provide the public with resources and information about federal, state, and local gun policy and the potential gun policy changes have to protect public safety.

Serve as a media resource – We supply journalists with background information on gun policy issues and model laws being enacted in other jurisdictions.

Coalition building – Texas Gun Sense has launched the Texas Coalition to Reduce Gun Violence on December 1, 2015 to create safer communities through a unified effort to raise awareness and reduce gun violence in Texas.

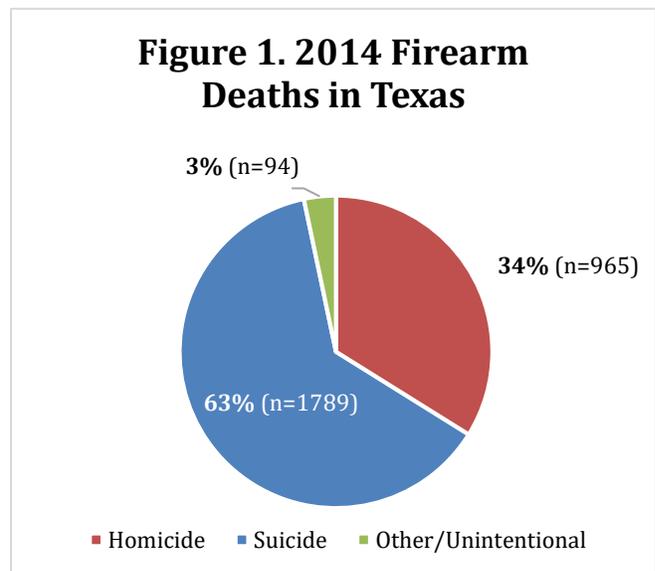
## INTRODUCTION

Firearm violence takes a tragic toll on society. Recent data shows there are more than 81,000 nonfatal firearm injuries<sup>1</sup> and 33,000 deaths<sup>2</sup>—nearly two-thirds of which are suicides<sup>3</sup>—per year in the United States. Effective solutions to reduce gun violence demand a comprehensive, evidence-based strategy. The Consortium for Risk-Based Firearm Policy (Consortium), a group of the nation’s leading experts in public health, mental health, and gun violence prevention, came together in March 2013 to address this complex issue. These esteemed researchers, practitioners, and advocates developed evidence-based gun violence prevention policy recommendations to reduce access to firearms by people who are at an increased risk of dangerous behavior.

This analysis from the Educational Fund to Stop Gun Violence (Ed Fund) examines how Texas law compares to the Consortium’s recommendations and outlines steps Texas should take immediately to prohibit individuals at increased risk of dangerous behavior from accessing firearms. The evidence supporting these recommendations is presented in the full Consortium Report: *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Policy*.<sup>4</sup>

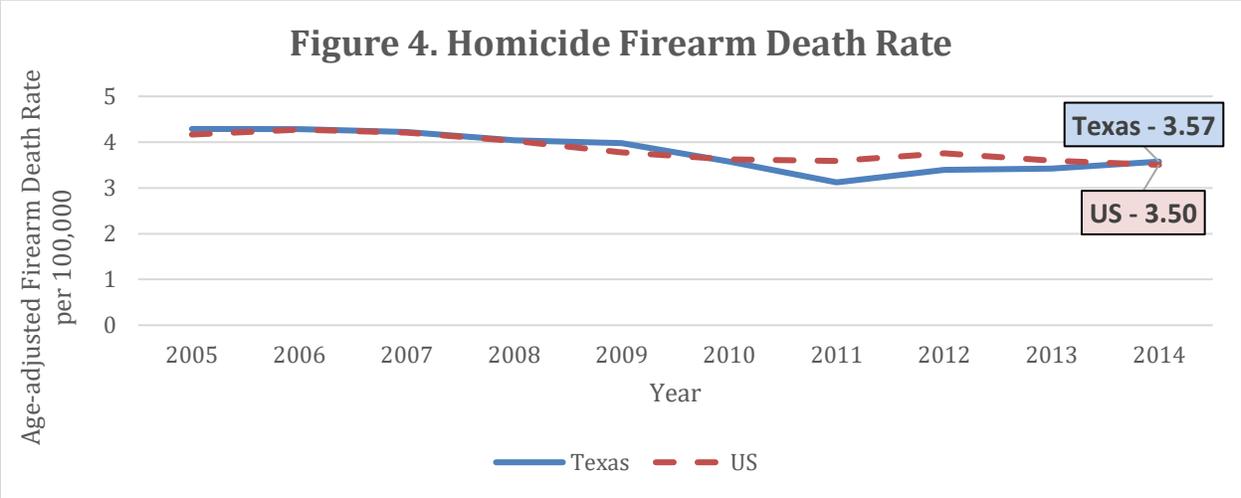
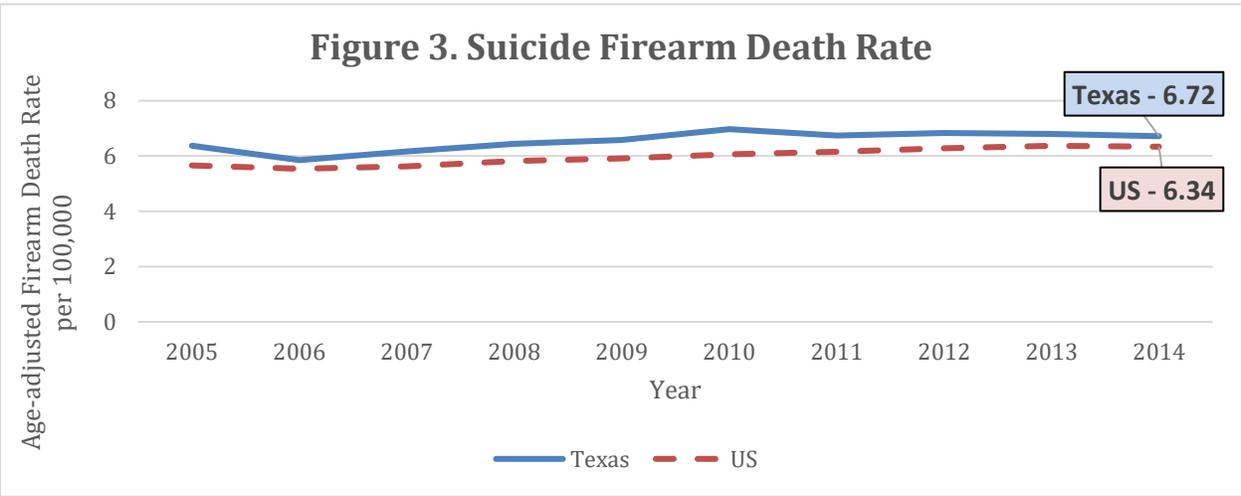
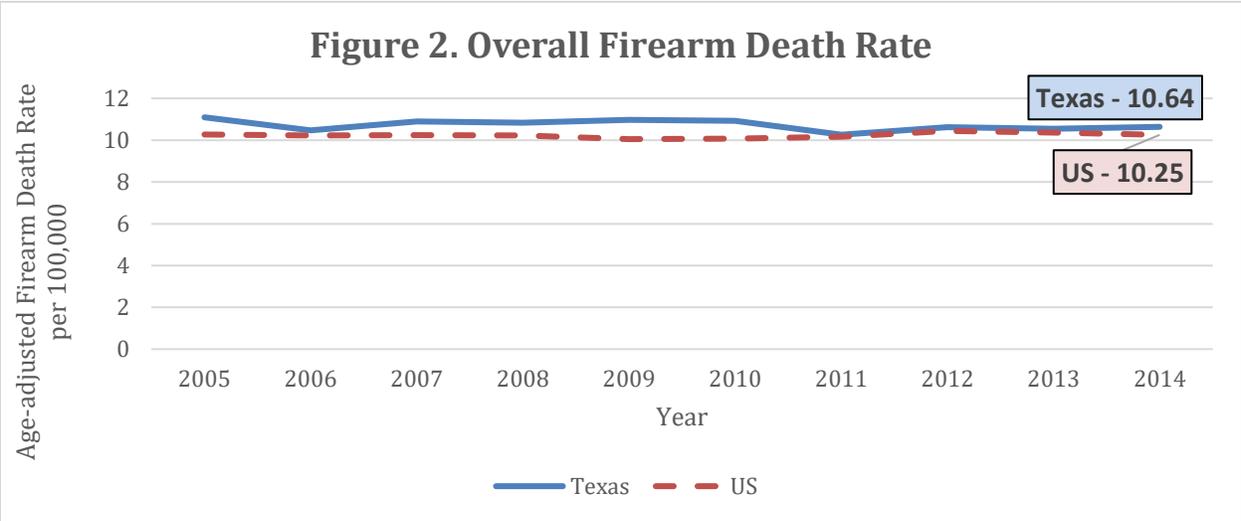
### I. THE PROBLEM: FIREARM DEATHS IN TEXAS

In 2014, nearly 3000 people died from firearm-related injuries in Texas (2848 total deaths), comprising almost 8.5% of all US firearm deaths in 2014.<sup>5</sup> In 2014, more people died from firearm-related injuries in Texas (2848 total deaths)<sup>6</sup> than from drowning, suffocation, terrorism, residential fires, and fires/burns (2,025 total deaths).<sup>7</sup> Similar to national data, the majority of gun deaths in Texas are suicides<sup>8</sup> (Figure 1), which accounted for 63% of all firearm deaths in Texas in 2014.<sup>9</sup>



Source: CDC’s WISQARS™ (Web-based Injury Statistics Query and Reporting System).

*In 2014, more people died from firearm-related injuries in Texas than from drowning, suffocation, terrorism, residential fires, and fires/burns.*



Source: CDC's WISQARS™ (Web-based Injury Statistics Query and Reporting System). Fatal Injury Reports, 1999-2014, for National, Regional, and States

## II. CONSORTIUM RECOMMENDATIONS & POLICY OPPORTUNITIES FOR TEXAS

The discourse after horrific mass shootings, such as the 1966 University of Texas mass shooting where 14 people died and 32 others were injured, often centers on the link between gun violence and mental illness. While research shows mental illness is strongly associated with suicide,<sup>10, 11</sup> the majority of individuals with mental illness will never be violent toward others.<sup>12-14</sup> There are certain times when persons with mental illness are at increased risk of interpersonal violence, such as the time period surrounding an involuntary hospitalization,<sup>15, 16</sup> but most people with common mental illnesses are not more violent than the general population without mental illness.<sup>17</sup> Mental illness alone accounts for a very small proportion of societal violence (about 4%);<sup>18</sup> therefore, policies must address other risk factors for dangerousness in order to reduce overall violence in society.<sup>19, 20</sup> Aside from mental illness on its own, stronger predictors for interpersonal violence—including homicide—are a history of violence (violent misdemeanor crime convictions<sup>21</sup> and domestic violence<sup>22-24</sup>), drug abuse,<sup>25</sup> and alcohol abuse.<sup>26,27</sup>

The Consortium recommends states expand current federal firearm prohibitions to include broader risk factors for dangerousness. Policies addressing risk factors for dangerousness provide a comprehensive, evidence-based approach to gun violence prevention that does not stigmatize mental illness alone as the root cause of violence.

### 1

#### MENTAL HEALTH RISK FACTORS FOR DANGEROUSNESS

Evidence shows that while mental illness on its own is not a strong predictor for violent behavior toward others, there are circumstances when mental illness makes an individual more prone to violence. For example, one such circumstance is the first episode of psychosis and the time periods just before and after an involuntary hospitalization.<sup>28, 29</sup> Mental illness *is* strongly associated with self-harm, and common mental illnesses such as depression can increase risk of suicide.<sup>30, 31</sup> Risk of suicide and access to firearms is particularly dangerous; 90% of attempted suicides by firearm are fatal.<sup>32</sup> See the following for the Consortium's recommendation regarding mental health risk factors for dangerousness.

**Recommendation #1: State law should be strengthened to temporarily prohibit individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. Concurrently, the process for restoring firearm rights should be clarified and improved.**

- 1.1 States should enact new legislation temporarily prohibiting individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. This prohibition should be predicated on a clinical finding of danger to self or danger to others.
- 1.2 Restoration of an individual’s ability to purchase or possess a firearm following a firearm disqualification due to mental illness should be based on an evaluation by a qualified clinician and a finding that the petitioner is unlikely to relapse and present a danger to self or others in the foreseeable future.

**How does Texas law compare to Consortium Recommendation #1?**

Texas law prohibits persons who have been involuntarily hospitalized from obtaining concealed carry licenses, but does not prohibit persons who have been involuntarily hospitalized from purchasing or possessing firearms.<sup>33</sup> Texas law does not base restoration of an individual’s ability to purchase or possess a firearm following a firearm disqualification due to mental illness on an evaluation by a qualified clinician. However, restoration is based on a finding that “the person is no longer likely to act in a manner dangerous to public safety.”<sup>34</sup>

The graphic consists of a light blue rectangular background with a dark blue border. On the left side, there is a white rectangular box with a dark blue border containing the text "Closing the Gap" in a bold, dark blue font. To the right of this box is a larger white rectangular box with a dark blue border, containing the text "Texas should temporarily prohibit persons who have been involuntarily hospitalized from purchasing or possessing firearms and refine the restoration process to include a clinical evaluation and risk assessment." in a dark blue font. The text in the right box is framed by two horizontal dark blue lines.

## 2

## OTHER RISK FACTORS FOR DANGEROUSNESS

As the majority of violence is related to factors other than mental illness alone, the Consortium recommends a risk-based approach to reducing violence, looking at other risk factors for dangerousness. A history of violence,<sup>35, 36</sup> including violent misdemeanor convictions<sup>37</sup> and perpetration of domestic violence,<sup>38-40</sup> is the strongest predictor of violence toward others. Individuals who abuse alcohol are at increased risk of homicide and suicide,<sup>41</sup> and research also shows that firearm owners are more likely to abuse alcohol.<sup>42-45</sup> Studies also show that illegal use of controlled substances is related to an increased risk of violence.<sup>46-50</sup> The cognitive impairment associated with drug use also makes it difficult to avoid violent conflict.<sup>51-53</sup> See below for the Consortium's recommendations regarding these other risk factors for dangerousness.

### **Recommendation #2: States should enact new prohibitions on individuals' ability to purchase or possess a firearm that reflect evidence-based risk of dangerousness.**

- 2.1 Individuals convicted of a violent misdemeanor should be prohibited from purchasing or possessing firearms for at least ten years.
- 2.2 Individuals who are subject to temporary domestic violence restraining orders should be prohibited from purchasing and possessing firearms for the duration of the temporary order.
  - 2.2-A. Individuals who are subject to domestic violence restraining orders of any kind should have firearms removed.
- 2.3 Individuals convicted of two or more DWI or DUIs in a period of five years should be prohibited from purchasing and possessing firearms for at least five years.
- 2.4 Individuals convicted of two or more misdemeanor crimes involving controlled substances in a five-year period should be prohibited from purchasing or possessing firearms for at least five years.

### **How does Texas law compare to Consortium Recommendation #2?**

Texas prohibits persons convicted of certain misdemeanor crimes of domestic violence from purchasing or possessing a firearm for five years, but does not prohibit those who have been convicted of other violent misdemeanors from purchasing or possessing a firearm for at least ten years.<sup>54</sup>

Texas prohibits purchase and possession of firearms by most, but not all, individuals subject to temporary domestic violence restraining orders.<sup>55</sup> Under Texas law, no one is authorized to order the removal of firearms from subjects of domestic violence restraining orders.

Texas does not have any alcohol-related or drug-related firearm purchase or possession prohibitions.

## Closing the Gap

**Texas** should prohibit persons convicted of any misdemeanor crime of violence from purchasing or possessing firearms for at least 10 years.

Texas should prohibit purchase and possession of firearms by all individuals subject to a temporary domestic violence restraining orders. Additionally, Texas should require the removal of firearms from persons subject to domestic violence restraining orders.

Texas should prohibit the purchase and possession of firearms by individuals convicted of two or more DWI or DUIs in a period of five years and by individuals convicted of two or more misdemeanor crimes involving controlled substances in a five-year period.

# 3

## PERIODS OF CRISIS

Law enforcement and concerned family members need tools to temporarily suspend firearms access during periods of crisis. Connecticut<sup>56</sup> and Indiana<sup>57</sup> have discretionary gun-removal tools for law enforcement, and California<sup>58</sup> became the first state in the country to pass a law providing family members with a similar option. See below for the Consortium's recommendations regarding these periods of crisis.

**Recommendation #3: Develop a mechanism to authorize law enforcement officers to remove firearms when they identify someone who poses an immediate threat of harm to self or others. States should also provide law enforcement with a mechanism to request a warrant authorizing gun removal when the risk of harm to self or others is credible, but not immediate. In addition, states should create a new civil restraining order process to allow family members and intimate partners to petition the court to authorize removal of firearms and temporarily prohibit firearm purchase and possession based on a credible risk of physical harm to self or others, even when domestic violence is not an issue.**

- 3.1 Authorize law enforcement to remove guns from any individual who poses an immediate threat of harm to self or others.
- 3.2 Create a new civil restraining order process to allow private citizens to petition the court to request that guns be temporarily removed from a family member or intimate partner who poses a credible risk of harm to self or others. This process should mirror the restraining order process in most states and include a temporary *ex parte* order as well as a long-term order issued after a hearing in which the respondent had an opportunity to participate. Respondents to an order issued through this process (Gun Violence Restraining Order or GVRO) will be prohibited from purchasing and possessing guns for the duration of the order and required to relinquish all firearms in their possession for the duration of the order. Law enforcement officers should be able to request a warrant through this process to remove guns when there is a credible risk of harm that is not immediate.
- 3.3 Include due process protections for affected individuals. Specifically, provide respondents with an opportunity to participate in a hearing after having their guns removed by law enforcement (3.1) or through the GVRO process (3.2) and assure processes are in place for returning all removed guns at the conclusion of the temporary prohibition.

### How does Texas law compare to Consortium Recommendation #3?

In 2013, Texas passed a law that allows officers to take a person into custody without a warrant if he or she has reason to believe that person has a mental illness and poses a substantial risk of serious harm. Under this provision, the individual's firearms may be seized for up to 30 days pending a hearing.<sup>59</sup>

#### Closing the Gap

**Texas** should create a Gun Violence Restraining Order (GVRO) mechanism to enable law enforcement and family or household members to petition the court to temporarily prohibit an individual in crisis from purchasing or possessing firearms. Dangerousness to self or others, rather than a diagnosis of mental illness, should be the criteria upon which the GVRO is issued.

### III. CONCLUSION

Texas does not meet many of the Consortium's risk-based firearm prohibitions. To meet the first Consortium recommendation, Texas should temporarily prohibit individuals who have been involuntarily hospitalized from purchasing and possessing firearms and refine the restoration process to include a clinical evaluation and risk assessment. To meet the second Consortium recommendation, Texas should prohibit all individuals convicted of misdemeanor crimes of violence from purchasing and possessing firearms for at least ten years, prohibit all persons subject to temporary domestic violence restraining orders from purchasing and possessing firearms, require the removal of firearms from persons subject to domestic violence restraining orders, and prohibit individuals convicted of two or more DUI/DWI offenses or two or more drug misdemeanor convictions within a five-year period from purchasing or possessing a firearm for five years. Finally, Texas should create a GVRO mechanism in accordance with the third Consortium recommendation. The recommendations in this report provide a blueprint for strengthening Texas state firearm policies by 1) expanding firearm prohibitions to encompass groups the research evidence shows are at heightened risk of committing violence and 2) developing mechanisms to allow for firearms to be removed from individuals who are at a serious risk of harm to self or others.

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<sup>55</sup> Vernon's Texas Statutes and Codes Annotated, Penal Code § 46.04. Unlawful Possession of Firearm V.T.C.A., Penal Code § 46.04 (West)

<sup>56</sup> CONN. GEN. STAT. § 29-38c

<sup>57</sup> IND. CODE ANN. § 35-47-14

<sup>58</sup> *Assembly Bill No. 1014*. (2014). Retrieved from California Legislative Information AB-1014 Gun violence restraining orders: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1014](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1014)

<sup>59</sup> V.T.C.A., Health & Safety Code § 573.001 § 573.001. Apprehension by Peace Officer Without Warrant

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## Appendix I.

An analysis of current Texas law and the corresponding Consortium recommendations is provided in the table below.

<b>Consortium Recommendation #1: Mental Health Risk Factors for Dangerousness</b>		
<b>1.1: Prohibit individuals following a short-term involuntary hospitalization from purchasing or possessing a firearm.</b>		
<b>Summary of Current Statute &amp; Recommendation</b>		
<ul style="list-style-type: none"><li>• Texas prohibits persons who have been involuntarily hospitalized from obtaining concealed carry licenses, but the state does not prohibit persons who have been involuntarily hospitalized from purchasing or possessing firearms.</li><li>• <b>Recommendation:</b> Texas should prohibit persons who have been involuntarily hospitalized from purchasing or possessing firearms.</li></ul>		
<b>Current Statute</b>		
Vernon's Texas Statutes and Codes Annotated § 411.172. Eligibility. V.T.C.A., Government Code § 411.172 (West).		
<p><b>(a) A person is eligible for a license to carry a handgun if the person:</b></p> <ul style="list-style-type: none"><li>(1) is a legal resident of this state for the six-month period preceding the date of application under this subchapter or is otherwise eligible for a license under Section 411.173(a);</li><li>(2) is at least 21 years of age;</li><li>(3) has not been convicted of a felony;</li><li>(4) is not charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under Section 42.01, Penal Code, or equivalent offense, or of a felony under an information or indictment;</li><li>(5) is not a fugitive from justice for a felony or a Class A or Class B misdemeanor or equivalent offense;</li><li>(6) is not a chemically dependent person;</li><li><b>(7) is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun;</b></li><li>(8) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense or of an offense under Section 42.01, Penal Code, or equivalent offense;</li><li>(9) is fully qualified under applicable federal and state law to purchase a handgun;</li><li>(10) has not been finally determined to be delinquent in making a child support payment administered or collected by the attorney general;</li><li>(11) has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the tax collector of a political subdivision of the state, or any agency or subdivision of the state;</li><li>(12) is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;</li><li>(13) has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and</li><li>(14) has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section 411.174.</li></ul> <p><b>(b) For the purposes of this section, an offense under the laws of this state, another state, or the United States is:</b></p> <ul style="list-style-type: none"><li>(1) except as provided by Subsection (b-1), a felony if the offense, at the time the offense is committed:<ul style="list-style-type: none"><li>(A) is designated by a law of this state as a felony;</li><li>(B) contains all the elements of an offense designated by a law of this state as a felony; or</li><li>(C) is punishable by confinement for one year or more in a penitentiary; and</li></ul></li><li>(2) a Class A misdemeanor if the offense is not a felony and confinement in a jail other than a state jail felony facility is affixed as a possible punishment.</li></ul> <p>(b-1) An offense is not considered a felony for purposes of Subsection (b) if, at the time of a person's</p>		

application for a license to carry a handgun, the offense:

(1) is not designated by a law of this state as a felony; and

(2) does not contain all the elements of any offense designated by a law of this state as a felony.

(c) An individual who has been convicted two times within the 10-year period preceding the date on which the person applies for a license of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense is a chemically dependent person for purposes of this section and is not qualified to receive a license under this subchapter. This subsection does not preclude the disqualification of an individual for being a chemically dependent person if other evidence exists to show that the person is a chemically dependent person.

**(d) For purposes of Subsection (a)(7), a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person:**

**(1) has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;**

(2) suffers from a psychiatric disorder or condition described by Subdivision (1) that:

(A) is in remission but is reasonably likely to redevelop at a future time; or

(B) requires continuous medical treatment to avoid redevelopment;

(3) has been diagnosed by a licensed physician, determined by a review board or similar authority, or declared by a court to be incompetent to manage the person's own affairs; or

(4) has entered in a criminal proceeding a plea of not guilty by reason of insanity.

**(e) The following constitutes evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1):**

**(1) involuntary psychiatric hospitalization;**

(2) psychiatric hospitalization;

(3) inpatient or residential substance abuse treatment in the preceding five-year period;

(4) diagnosis in the preceding five-year period by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(5) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:

(A) schizophrenia or delusional disorder;

(B) bipolar disorder;

(C) chronic dementia, whether caused by illness, brain defect, or brain injury;

(D) dissociative identity disorder;

(E) intermittent explosive disorder; or

(F) antisocial personality disorder.

(f) Notwithstanding Subsection (d), a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subsection (d) or listed in Subsection (e) is not because of that disorder or condition incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person provides the department with a certificate from a licensed physician whose primary practice is in the field of psychiatry stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop at a future time.

(g) Notwithstanding Subsection (a)(2), a person who is at least 18 years of age but not yet 21 years of age is eligible for a license to carry a handgun if the person:

(1) is a member or veteran of the United States armed forces, including a member or veteran of the reserves or national guard;

(2) was discharged under honorable conditions, if discharged from the United States armed forces, reserves, or national guard; and

(3) meets the other eligibility requirements of Subsection (a) except for the minimum age required by federal law to purchase a handgun.

(h) The issuance of a license to carry a handgun to a person eligible under Subsection (g) does not affect the person's ability to purchase a handgun or ammunition under federal law.

**1.2: Refine the restoration process to include evidence from a clinician that the petitioner is unlikely to be a danger to themselves or others in the foreseeable future.**

**Summary of Current Statute & Recommendation**

- Texas does not require that a petitioner seeking relief from disability to undergo a clinical evaluation and risk assessment.
- **Recommendation:** Texas should refine its restoration process to include a clinical evaluation and risk assessment.

**Current Statute**

Vernon's Texas Statutes and Codes Annotated, Health and Safety Code § 574.088. Relief from Disabilities in Mental Health Cases  
V.T.C.A., Health and Safety Code § 574.088 (West)

- (a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.
- (b) In determining whether to grant relief, the court must hear and consider evidence about:
- (1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
  - (2) the person's mental history;
  - (3) the person's criminal history; and
  - (4) the person's reputation.
- (c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:
- (1) the person is no longer likely to act in a manner dangerous to public safety; and
  - (2) removing the person's disability to purchase a firearm is in the public interest.

**Consortium Recommendation #2: Other Risk Factors for Dangerousness**

**2.1: Prohibit individuals convicted of a violent misdemeanor from purchasing or possessing a firearm for at least ten years.**

**Summary of Current Statute & Recommendation**

- Texas prohibits persons convicted of certain misdemeanor crimes of domestic violence from purchasing or possessing a firearm for five years, but does not prohibit those who have been convicted of other violent misdemeanors from purchasing or possessing a firearm for at least ten years.
- **Recommendation:** Texas should prohibit individuals convicted of all violent misdemeanors from purchasing or possessing a firearm for at least ten years.

**Current Statute**

Vernon's Texas Statutes and Codes Annotated, Penal Code § 46.04. Unlawful Possession of Firearm  
V.T.C.A., Penal Code § 46.04 (West)

- (b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:
- (1) the date of the person's release from confinement following conviction of the misdemeanor; or
  - (2) the date of the person's release from community supervision following conviction of the misdemeanor.

**2.2: Prohibit individuals subject to a temporary domestic violence restraining order from purchasing or possessing a firearm for the duration of the order.**

**Summary of Current Statute & Recommendation**

- Texas prohibits purchase and possession of firearms by most, but not all, individuals subject to temporary domestic violence restraining orders.
- **Recommendation:** Texas should close loopholes in its law to ensure that anyone subject to a temporary domestic violence restraining order is prohibited from purchasing or possessing firearms.

**Current Statute**

Vernon's Texas Statutes and Codes Annotated, Penal Code § 46.04. Unlawful Possession of Firearm  
V.T.C.A., Penal Code § 46.04 (West)

(c) A person, other than a peace officer, as defined by Section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292 or Chapter 7A, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

**2.2-A: Remove firearms from persons subject to any type of domestic violence restraining order.**

**Summary of Current Statute & Recommendation**

- Under Texas law, no one is authorized to order the removal of firearms from subjects of domestic violence restraining orders.
- **Recommendation:** Texas should enact legislation that authorizes the removal of firearms to all types of domestic violence restraining orders.

**Current Statute**

N/A

**2.3: Prohibit individuals convicted of two or more DUI or DWIs within a five-year period from purchasing or possessing firearms for at least five years.**

**Summary of Current Statute & Recommendation**

- Texas has no alcohol-related prohibitions on firearm purchase or possession.
- **Recommendation:** Recommend implementing Consortium recommendation 2.3 to prohibit individuals convicted of two or more DUI/DWI offenses within a five-year period from purchasing or possessing a firearm for at least five years.

**Current Statute**

N/A

**2.4: Prohibit individuals convicted of two or more misdemeanor drug crimes within a five-year period from purchasing or possessing firearms for at least five years.**

**Summary of Current Statute & Recommendation**

- Texas has no drug-related prohibitions on firearm purchase or possession.
- **Recommendation:** Recommend implementing Consortium recommendation 2.3 to prohibit individuals convicted of two or more misdemeanor drug crimes within a five-year period from purchasing or possessing a firearm for at least five years.

**Current Statute**

N/A

### Consortium Recommendation #3: Periods of Crisis

**3.1-3.3: Create a Gun Violence Restraining Order (GVRO) mechanism to enable law enforcement, family members, and intimate partners to petition the court to temporarily prohibit an individual in crisis from purchasing or possessing firearms.**

#### Summary of Current Statute & Recommendation

- In 2013, Texas passed a law that allows officers to take a person into custody without a warrant if he or she has reason to believe that person has a mental illness and poses a substantial risk of serious harm. Under this provision, the individual's firearms may be seized for up to 30 days pending a hearing.
- **Recommendation:** Amend statutory language to incorporate Consortium recommendations 3.1, 3.2, and 3.3.

#### Current Statute

V.T.C.A., Health & Safety Code § 573.001  
§ 573.001. Apprehension by Peace Officer Without Warrant

- (a) A peace officer, without a warrant, may take a person into custody if the officer:
- (1) has reason to believe and does believe that:
    - (A) the person is a person with mental illness ; and
    - (B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and
  - (2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.
- (b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:
- (1) the person's behavior; or
  - (2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.
- (c) The peace officer may form the belief that the person meets the criteria for apprehension:
- (1) from a representation of a credible person; or
  - (2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.
- (d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:
- (1) the nearest appropriate inpatient mental health facility; or
  - (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.
- (e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.
- (f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.
- (g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:
- (1) of the reason for the detention; and
  - (2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).
- (h) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Vernon's Ann.Texas C.C.P. Art. 18.191

Art. 18.191. Disposition of firearm seized from certain persons with mental illness

- (a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense

under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);

(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection (f).

(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

(1) releasing the firearm to the person's designee, if:

(A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);

(B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee:

(i) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(ii) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001, Health and Safety Code, has reestablished the person's eligibility to

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lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001, Health and Safety Code, may not be destroyed or forfeited to the state.