

TEXAS ★ EXILE
GUN CRIME MEANS HARD TIME

A Common Sense Approach To The Problem of Gun Violence

By The Honorable John Cornyn
Attorney General of Texas

You likely never have heard of Nicholas Alexander Martin. His name won't be mentioned around the water fountain in your office, nor will it be found in any Texas history books. Yet, when it comes to Texas Exile, there may be no more significant figure than Nicholas Alexander Martin. He exemplifies the need for Texas Exile, a crime-control initiative I unveiled in December '99 designed to get to the root cause of gun violence – criminals who illegally carry and use weapons.

Martin was riding his motorcycle in Fort Worth when police officer Phil Woodward pulled him over for what looked to be a routine traffic stop. Looks can be deceiving, as Woodward quickly learned. Martin had a bandoleer of shotgun shells, a pistol, a shotgun, four feet of telephone cord, surgical gloves, a flashlight, a ski mask and a knife. He was not on his way to a Boy Scout picnic. However, Martin was prepared for something.....something no good. With four prior felonies, Martin could be arrested under the parameters of Texas Exile.

Today, Nicholas Alexander Martin is serving 17 years hard time in a federal penitentiary. Martin learned that the slogan for Texas Exile – “Gun Crime Means Hard Time” – has significance. He learned that if you carry a weapon illegally in Texas, you will do hard time in prison. And he isn't the only one who learned that lesson.

Texas Exile does NOT create new gun laws. It enforces the gun laws already on the books.

In June, United States District Judge Terry R. Means sent James McFarland, Jr., to federal prison for 97 ½ years after a jury convicted the Fort Worth man of committing four robberies, carrying and using a firearm in each one. McFarland had five previous felony convictions – four robbery convictions and one

drug conviction. In March, just four months into the existence of Texas Exile, an Austin police officer arrested a man who was characterized as a career criminal. The officer apprehended the man after he had attempted to flee from the scene. Once in custody, the arresting officer asked the man why he ran. Without hesitation, the man replied, “I heard

about that new program that would get me five extra years in jail if I had a gun.” Can there be any better endorsement of Texas Exile?

Assurance of hard time in a federal prison without probation or parole is a sobering thought. Obviously, it is already a deterrent. Texas Exile is an unprecedented cooperative effort between state, federal and local law enforcement officials. From the Attorney General to the policeman on the beat, Texas Exile is one unified fighting force committed to stifling gun violence in Texas.

The concept was conceived in Richmond, Va., in 1997 when officials there were looking for an answer to a gun violence rate that had reached an appalling level. Richmond had the second-highest homicide rate in the United States. Project Exile enabled Richmond to cut its gun violence rate by 50 percent in only one year. In early September '99, Fort Worth established Safe Cities USA, which came under the Texas Exile umbrella when later in the month Gov. George W. Bush's Criminal Justice Division gave my office a grant of \$1.6 million to establish Texas Exile. Of that grant, \$1.28 million funds the prosecutors I have hired to solely prosecute gun crimes. And prosecution.....is prevention.

The prosecutors concentrate on gun crimes in the Texas Exile cities: Austin, Beaumont, Dallas, El Paso, Fort Worth, Houston, San Antonio, Tyler, Corpus Christi and Brownsville. However, since Exile is a statewide program, cases from across the state are considered for prosecution. Working with the special prosecutors, who have been cross-designated in

order to try cases in state and federal court, are the four U.S. Attorneys in Texas, as well as the district attorneys in the major cities. When law enforcement reports a crime where

a weapon was used or possessed, the DA's Office and the U.S. Attorney's Office confer to decide whether the prosecution should proceed in state or federal court, depending on what penalties are applicable. Prosecutors want to "exile" habitual offenders, removing them from the streets.

Texas Exile's goal is to create a legal system where the violent criminal or drug trafficker carrying a weapon faces swift and certain prosecution with harsh

penalties. The remainder of the grant money for Texas Exile has gone toward the public awareness campaign. And to coordinate that campaign, I selected men and women in the Exile cities to act as chairs in order to educate and inspire those in the community in which they live. These men and women have spread the word about the initiative, raising the profile of Texas Exile throughout the state.

The regional chairs are: Roy Butler, Austin; Rex Cottle, Beaumont; Ygnacio Garza, Brownsville; M. Colleen McHugh, Corpus Christi; Nickie Murchison, Dallas; Alejandro Acosta, Jr., El Paso; Michael Stevens, Houston; Roger R. Hemminghaus, San Antonio; L. Lowry Mays (Honorary), San Antonio; Herb Buie, Tyler; Rohn Boone, Tyler.

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I was elated to be able to enlist the help of former FBI Director and federal judge William Sessions of San Antonio to serve as the state chair. This is a wonderful team to energize the public awareness campaign, which is vital to the success of the initiative. In less than a year since the rollout, there can be little debate regarding the impact of Texas Exile. Consider these numbers as of the end of September 2000:

- more than 450 arrests,
- 362 indictments,
- 140 convictions, and;
- more than 850 guns confiscated.

Arguably, that final statistic may be the most important because the key to Texas Exile's effectiveness in reducing gun violence is getting guns out of the hands of the criminals. Texas Exile can prevent homicides. Convicted felons who are prohibited from possessing a weapon will find Sections 922 and 924 of Title 18 of the United States Code strictly enforced in our state. According to the parameters of Texas Exile, those who can't possess firearms or ammunition are:

- a convicted felon and/or a person on felony probation or parole,
- a person under felony indictment,
- a drug dealer or trafficker,
- a person with a misdemeanor domestic violence conviction,
- a fugitive from justice,
- a person in a school zone, and;
- an alien unlawfully in the United States.

Texas Exile ensures that anyone who is carrying a gun while in the commission of a violent crime automatically receives a mandatory minimum five-year prison sentence, in addition to the punishment associated with the underlying offense. My reasons for embracing Texas Exile were two-fold:

1. Texas Exile does NOT create new gun laws. It enforces the gun laws already on the books.
2. Texas Exile targets criminals, without infringing on the rights of law-abiding citizens. Thus, it is a crime-control initiative.

Recently, Fox News asked a sampling of registered voters nationwide what would more likely decrease gun violence: Better enforcement of existing laws or more laws. The respondents favored better enforcement of existing laws by 41-to-37 percent. Texas Exile isn't about more bureaucracy in the form of more gun laws. It is about making certain the laws already on the books are enforced. With Texas Exile, prosecutors may use federal or state firearm statutes in order to achieve the maximum penalty for the criminals. Some cases will be more effectively prosecuted on the state level, such as some aggravated offenses and homicides. The cases more appropriate for federal prosecution are primarily felons in possession of firearms and drug dealers with firearms. The difference in state and federal prosecution is that the state will enhance the penalty if the offense is aggravated and a

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*Chip Davis,
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weapon is involved. On the federal side, the laws create separate criminal liability for the weapon's offense. That means the criminal penalties for illegally possessing a firearm are in addition to the underlying offense. Consequently, these sentences run consecutively, not concurrently. Federal firearm statutes provide a powerful tool that can be used against the armed criminal. In state court, weapons charges are often pled down to a misdemeanor violation and the defendant is out on probation. In federal court, carrying a firearm in connection with drug dealing or while committing a federal violent crime imposes a mandatory minimum five-year jail term in addition to the underlying offense.

Other examples include:

- Possession or receipt of a firearm or ammunition by a prohibited person is punishable by up to 10 years in prison. The person may receive a minimum sentence of 15 years without parole if the felon has three or more prior convictions for a felony offense of violence, (e.g. burglary, robbery, assault, possession of offensive weapons and/or a drug trafficking felony).
- Knowingly sell, give or otherwise dispose of any firearm to a person who falls within the parameters of Texas Exile is punishable by up to 10 years in prison.
- Use or carry a firearm during or in relation to, or, possess a firearm in furtherance of a drug trafficking crime or federal crime of violence. Punishment ranges from a minimum of five years to life imprisonment, without parole, or death, if death results from the use of a firearm.
- Prohibits stealing or unlawfully taking away firearms from the business inventory of a Federal firearms licensee. It is punishable by

up to five years. Stealing a firearm which has moved in commerce is punishable by up to 10 years.

- Firearm in a school zone is punishable by up to five years imprisonment.
- Unlawful possession, manufacture or transfer of certain firearms and devices makes it unlawful to possess a semi-automatic assault weapon manufactured after Sept. 13, 1994. It is punishable by up to five years.
- Sell, deliver or transfer to a juvenile prohibits a Federal firearms licensee from selling or delivering a firearm or ammunition to a person under 18.

Thus, the advantage to prosecutors under Exile.

Now, if imitation is the sincerest form of flattery, as the adage suggests, we in Texas have reason to be flattered by the Michigan House of Representatives. Michigan HB 5744 calls for the creation of the Project Exile Commission, which will be structured along the lines of Texas Exile. Chip Davis, the Michigan House Majority Assistant Counsel, noted, "Our people have been impressed with the aggressive focus of Texas Exile. The organization in a state the size of Texas is really something."

In addition, last March Florida Rep. Bill McCollum introduced, "Project Exile: The Safe Street and Neighborhoods Act of 2000" with the support of my office. Then, on April 11, the U.S. House of Representatives overwhelmingly passed the Bill, which provides funding to support states in the enforcement of tough gun laws already on the books -- the staple of Texas Exile. The Bill

authorizes \$100 million over five years to be used in block grants to qualifying states, of which we are one. Remember, too, Texas Exile is supported by all sides of the gun debate, which speaks further to its effectiveness.

With the 77th Legislature convening in the not-too-distant future, my office is entertaining the possibility of proposing new legislation to strengthen our state gun laws so that more Texas Exile cases can be brought into state court. In addition, we want the Legislature to be well aware of the Texas Exile statistics that indicate the success of the initiative in a relatively short time. Another option my office is entertaining is to request funding from the Legislature to continue Texas Exile in its current form. The grant from the Governor's office that created Exile is for two years.

Will Texas Exile stop every violent crime? Sadly, no.

But with the creation of Texas Exile, no longer are we simply talking about a problem. We did something about it. Will we see a dramatic decrease in gun violence in Texas in the years ahead? I believe we will. That is why I am sold on Texas Exile. Texas Exile is a win-win proposition. And that.....is always good public policy.

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For additional information on Texas Exile, call The Office of the Attorney General at 1-800-252-8011. Or log onto the web sites: www.TexasExile.com or www.oag.state.tx.us).