



Texas Public Policy Foundation
**LEGISLATOR'S GUIDE
TO THE ISSUES
2021-2022**

Constitutional Policing

The Issue

True conservative governance means not only having strong civil institutions to protect the natural rights of all Texans, but also allowing individuals the ability to protect their own. Protecting society is the role of our police officers, and policing is currently the topic of significant public discussion. A lack of transparency; unions complicating the ability to properly train, discipline, and remove individuals who do not serve and protect; over-criminalization; and the militarization of the police culture are frequently cited as contributing to distrust.

But amid calls for defunding our police, there should come the realization that reduced resources would surely make these issues much worse. Better policing through defunding is illogical on its face. Budget cuts decrease the ability of a police agency to train its officers and hamper its ability to attract quality recruits. Furthermore, it will reduce law enforcement's ability to use innovative programs to improve public safety and public relations.

Unions, militarization, and a lack of training lead to questionable police tactics that can alter public trust. Coupled with excessive enforcement of less serious offenses, such as committing a traffic violation, looking for citations and related fines as a revenue source rather than a public safety tool further distances the police from the public they serve. When a police officer chooses to make a custodial arrest for the most minor of infractions, he or she can create an even more negative encounter. Constant enforcement for simple infractions fosters distrust and creates an atmosphere of animosity. Legitimacy of authority and just actions can powerfully affect a citizen's choice to follow the law. Yet officers lacking the capacity or desire to exercise good discretion can cause this perception of legitimacy to be strained.

Proper training can accomplish an incredible amount of improvement in both recruits and in-service officers—but only if we start with and retain high-quality officers. Not everyone should be a police officer, and no amount of training can prepare a person unsuited for this line of work. Block training, where the recruits receive a specific number of hours to comply with the specific training requirements, is an acceptable method of delivery under the current standards, but it is not an effective method for training police officers in the complex skills they need to perform their jobs.

Secondly, agencies must be able to discipline officers when they deviate from their mission. The goal of discipline is to fix a problem so it does not happen again, to guide an officer back on track. Terminating officers for unforgivable offenses or because they cannot respond to training or discipline is also necessary and should not be confused with discipline. Police unions unfortunately represent a barrier to both processes and often interfere with the departments' goals and visions by keeping officers working

who should not be, or preventing necessary discipline from occurring where termination is not needed.

Finally, some situations require special weaponry and procedures, but these options must be carefully considered where tactical teams are deployed. Police need special weapons and tactics (SWAT) in some situations, but there is a fine line between necessity and common practice. Citizen liberties—those protected by our Bill of Rights—can easily suffer collateral damage from roughshod “battle” tactics executed by poorly trained and equipped SWAT teams.

Indisputably, a law enforcement focus—a mission—is necessary in our society. But “mission over liberty” should never pilot the course. Reestablishing the role of our police as protectors of our rights, keepers of the peace, and integral members of our communities is vital to the restoration of public safety. To this end, police agencies must develop and implement true community engagement initiatives to include the members of their communities in the policing process.

The Facts

- SWAT team formation, training, equipment procurement, and deployment criteria are not regulated or monitored by the state.
- Local law enforcement, including school district police departments, currently possesses or can readily obtain military equipment such as armored personnel carriers and high-powered weapon systems. Requirements for transparency in its planned use, actual use, or costs for upkeep are few.
- Training throughout Texas is regulated by the Texas Commission on Law Enforcement. This agency establishes guidelines based on its regulatory authority and relevant state statutes. Despite a comprehensive curriculum and course objectives as a minimum state standard, police training academies are given wide latitude in the way they deliver the training.
- Chapter 14 of the Texas Code of Criminal Procedure authorizes peace officers to arrest without a warrant for offenses within their presence or view. Offenders can be stopped and jailed for minor violations, including traffic infractions, at the discretion of a police officer even if the category of the offense does not carry a custodial sanction, a concept reaffirmed by the Supreme Court decision in *Atwater v. Lago Vista*.

Recommendations

- Require the Texas Commission on Law Enforcement to establish more comprehensive training for academy cadets

continued

and incumbent officers. Ongoing, short-duration, but higher-frequency training, particularly in physical skills, will establish a lasting skill set compared with the block training model. Additionally, the training cannot be contained to a silo. It must be integrated with other skills in scenario-based training events to be fully learned and utilized, and it should continue throughout an officer's career. Training should focus on the following:

- ▶ Better understanding of the principles of liberty.
 - ▶ Use of discretion.
 - ▶ Better understanding of protections afforded citizens under the Fourth Amendment.
 - ▶ Skills training, including a physical fitness standard for recruits and in-service police officers. Develop constitutionally informed police training curricula, focusing on protecting the members of a community along with their rights.
- Develop protocol for community engagement that includes “bottom-up policing leadership,” giving community stakeholders important duties and contributions in how they are policed.
 - Limit arrests for non-jailable offenses, reserving jail capacity for whom it is necessary and keeping our police officers on the street.
 - Require greater transparency and regulation in SWAT resources, training, and deployment, including enhanced tracking and reporting of instances of usage. Requiring the local governing unit to approve applications for and receipt of such equipment will provide oversight and transparency to the process of acquiring military equipment from the federal government through the Department of Defense and the 1033 program.

Resources

Militarizing the American Criminal Justice System by Peter Kraska, Northeastern University Press (2001).

[*Final Report of the President's Task Force on 21st Century Policing*](#), Office of Community Oriented Policing Services (May 2015).

“[Getting Serious About Police Training](#)” by Randy Petersen and Mike Hughes, *Townhall* (June 27, 2020).

[*Leadership in Policing: A Bottom-Up Approach*](#) by Currie Myers, Texas Public Policy Foundation (May 2020).

“[Cities Like Camden, New Jersey, Show the Dangers of Defunding the Police](#)” by Randy Petersen, *The Federalist* (June 9, 2020).

[*Fitness Testing for Law Enforcement Benefits Everyone – Bill Analysis*](#) by Randy Petersen, Texas Public Policy Foundation (March 2017).

[*Texas Commission on Law Enforcement Statutes and Rules Handbook*](#) by Texas Commission on Law Enforcement (Feb. 2020).

“[Keys to Training Excellence](#)” by Dr. William Lewinski, Force Science Institute (July 9, 2019).

[*On the Militarization of Our Police*](#) by Randy Petersen, Texas Public Policy Foundation (Dec. 2018).

[*A Perspective on Special Weapons and Tactics \(SWAT\) Teams*](#) by Randy Petersen, Texas Public Policy Foundation (June 2019).