



POLICY MEMORANDUM

**Threat Assessment, Prevention, and Safety Act of 2019
("TAPS Act")**

May 4, 2020

SUMMARY

The Threat Assessment, Prevention, and Safety Act of 2019 (“TAPS Act”) is a legislative proposal introduced as H.R. 838 in the wake of, and in response to, highly televised mass murders. The Act’s purported purpose is “[t]o develop a national strategy to prevent targeted violence through behavioral threat assessment and management, and for other purposes.”¹

To develop a “national strategy,” the bill would establish a task force consisting of 24 unelected, generally unsupervised individuals who are free to change their own operating rules and procedures at a moment’s notice.² The Task Force would provide training and recommendations on how to use state and local assets to build databases of information on private people, to collaborate with private entities (including social media companies) and schools to do the same, and on using mental health professionals to “assist” in assessing threats.³

The terms defined in the TAPS Act are murky not because of poor drafting, but because this bill is an attempt to establish a domestic surveillance program to monitor private people.⁴ When the goal is to collect information for the purpose of building massive databases, vague terms are government’s best friend. Especially when the officials implementing the scheme would largely be the same ones interpreting it.

The Act would give the Department of Homeland Security the authority to issue grants to “eligible entities” in order to encourage those entities to hand information to “fusion centers,” which are defined as collaborative efforts of state, federal, and local governments⁵ “with the goal of maximizing the ability of such agencies to detect, prevent, investigate,

¹ Threat Assessment, Prevention, and Safety Act of 2019, H.R. 838, 116th Cong. (2019-2020) (“TAPS Act”).

² *Id.* at Sec. 4.

³ *Id.* at Sec. 5.

⁴ *See, e.g.*, Sec. 1 (where the drafter failed to define “private entities with protective or public safety responsibilities” as used in Sec. 5).

⁵ “[T]he term ‘fusion center’ means a collaborative effort of 2 or more Federal, State, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity.” 6 U.S.C. 124h(j)(1).

apprehend, and respond to criminal or terrorist activity.”⁶ The government could then use the data it collected to build behavioral models based on otherwise harmless behavior such as purchasing two handguns in one month. That model could then be used to target unwitting, innocent gun owners as potential “threats.”

The TAPS Act is potentially disastrous for those intent on exercising their right to keep and bear arms, and assuredly catastrophic for the privacy rights reserved to the People under the Fourth and Fourteenth Amendments.

History

Sponsored by Representative Brian Babin (TX-36), the Threat Assessment, Prevention, and Safety Act of 2019⁷ was introduced to Congress on January 29, 2019 in H.R. 838 and passed to the Subcommittee on Crime, Terrorism, and Homeland Security on March 25, 2019.⁸ Since September of 2019, 47 co-sponsors have signed onto the bill, many in April of 2020.

State of the Issue

The stated purpose of H.R. 838 is “[t]o develop a national strategy to prevent targeted violence through behavioral threat assessment and management, and for other purposes.”⁹ The Congressional findings posit that “incidents of targeted violence are impacting our Nation frequently and indiscriminately”¹⁰ and that the federal government can “rapidly develop behavioral threat assessment and management guidelines and best practices.”¹¹

This leaves out, of course, an important question: At what cost to our liberty and constitutional principles?

⁶ Dept. of Homeland Security, *National Network of Fusion Centers Fact Sheet*, <https://bit.ly/2fVUgEV> (last visited Sept. 8, 2019).

⁷ *Id.*

⁸ See United States Congress, *All Actions Except Amendments H.R.838*, 116th Congress (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/838/all-actions-without-amendments>.

⁹ See introductory language to H.R. 838.

¹⁰ TAPS Act, Sec. 2.

¹¹ *Id.*

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The term “behavioral threat assessment and management” is defined in the Act as “the systematic and evidence-based process of”:

- (A) identifying individuals who are exhibiting patterns of concerning behavior that indicate an interest, motive, intention, or capability of carrying out an act of violence;
- (B) investigating and gathering information from multiple sources to assess whether an individual described in subparagraph (A) poses a threat, based on articulable facts; and
- (C) the subsequent management of such a threat, if necessary.¹²

In other words: wholesale domestic surveillance and callous disregard of the Fourth Amendment. “Gathering information from multiple sources” is merely a polite way to say gathering intelligence using classified and/or unclassified sources. In other words: whatever they can get their hands on.

The TAPS Act would create a “Task Force” consisting of up to 24 “experts” in “behavioral threat assessment and management,” to develop “a national strategy to prevent targeted violence” in communities and schools.¹³

“Subject to applicable privacy laws and regulations, the Task Force may secure directly from any Federal department or agency information necessary to enable it to carry out the duties of the Task Force.”¹⁴ The task force would make recommendations regarding:

- 1) How to most effectively utilize existing infrastructure.
- 2) How to improve the way different levels of government assess and manage threats.
And how to improve the way they work together to do so.

¹² *Id.* at Sec. 3(2).

¹³ *Id.* at Sec. 4.

¹⁴ *Id.* at Sec. 4(g).

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- 3) A training program to help government employees and “private entities with protective or public safety responsibilities” work together and share information.
- 4) Another training program, similar to that described in #3, but designed for schools.
- 5) How mental health professionals may assist in assessing threats.¹⁵

All of these objectives are essential to intelligence gathering, processing, and dissemination. Training on utilization of infrastructure and information sharing equates to pipelining intelligence from assets back to an operations center. The bill’s author also conveniently omitted a definition of “private entities with protective or public safety responsibilities.” As a result, this bill may allow “fusion center[s]”¹⁶ and other law enforcement entities to collect information on individuals, or more succinctly stated: domestic surveillance.

The Secretary of Homeland Security would take the Task Force’s recommendations and create “a national strategy relating to behavior threat assessment and management.”¹⁷ The Secretary would be able to provide financial incentives through grants and/or contracts to states, local governments, educational entities, public agencies, and private entities to implement the “national strategy.” By providing these incentives, DHS will solidify its grasp on state, local, and even private resources for intelligence collection. All this, to focus on “behavior threat assessment,” or, as it can be more appropriately called, “pre-crime.”

Regarding firearms, the bill expressly forbids any appropriated funds from being used to “train any individual in the use of a firearm” or to “encourage or discourage the otherwise legal ownership and use of firearms.”¹⁸ Additionally, “Nothing in this Act may be construed to preclude or contradict any other provision of law authorizing the provision of firearms or training in the use of firearms.”¹⁹

¹⁵ *Id.* at Sec. 5.

¹⁶ *Id.* at Sec. 1.

¹⁷ *Id.* at Sec. 6.

¹⁸ *Id.* at Sec. 9.

¹⁹ *Id.*

Despite the language that seemingly ensures firearm ownership and current gun laws will not be affected, this bill is ripe for abuse. Some of the many concerns with the TAPS Act are outlined below.

- The task force could consider many typical behaviors of gun-owners, or other groups, to be indicative of a capability to carry out violence. Common, lawful practices like: purchasing ammunition in bulk to get a lower price, buying more than one handgun in a month, or an interest in anything disfavored by the task force (think: “assault weapons,” or “extreme” political positions). Based on such lawful behavior alone, implementing the “national strategy” might require investigating innocent people and then taking action to “manage” nonexistent threats.
- The fact that the Task Force may obtain almost any information it desires from any federal department or agency is alarming. Especially considering the authority it would have to use that information.
- The conclusory nature of the Task Force’s investigative process would allow it to be used for political cover to pass and defend unconstitutional laws. For example, the findings may be used to support a bill that unconstitutionally restricts firearm ownership or privacy rights. When such laws are challenged, “courts must accord substantial deference to the predictive judgments” of legislatures.²⁰ That “substantial deference”—alone concerning—and the Task Force’s findings could be relied upon to help uphold an unconstitutional law.
- The intent to encourage and facilitate the sharing of information between governments and “private entities with protective or public safety responsibilities” raises myriad privacy and surveillance concerns—especially if it includes companies like Facebook, Twitter, and Google, which have demonstrated hostility towards certain political viewpoints.
- The extraordinary vagueness of the bill exacerbates the preceding concerns, since it fails to impose clear limitations on the Task Force.

²⁰ *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 665 (1994).

Our View

The Threat Assessment, Prevention, and Safety Act of 2019 is an attempt to normalize domestic surveillance and punish Americans for things they *might* do in the hollow name of national security. There is little to no oversight over how the Task Force may go about achieving its goals. In fact, “[a]ny member of the Task Force may propose to develop or change existing operating rules and procedures of the Task Force consistent with the functions of the Task Force”²¹ with a majority vote.

Given how vaguely the TAPS Act defines terms, the efforts of this organization could result in the federal government using private entities to collect personal information on private citizens.

If passed, the entities involved will provide legal cover for any number of unconstitutional regulations or prohibitions that may follow due to the courts’ doctrine of legislative deference. We are disappointed to have watched the sponsor count grow on what we believe is a transparently bad law.

The TAPS Act and its policies are a distraction. A “smoke show” for furthering the federal government’s interest in breaching both the structure of dual federalism and the private affairs of Americans, all in the hollow name of “national security.” As such, the TAPS Act should be resolutely rejected.

²¹ TAPS Act, at Sec. 4.