

RECOMMENDED ACTION MEMO

Agency: Executive Office of the President (EOP)
Topic: Establishing a White House Task Force on Gun Violence Prevention
Date: November 2020

Recommendation: Issue an executive order establishing an interagency White House task force on gun violence prevention.

I. Summary

Description of recommended executive action

The next administration should leverage the full authority and resources of the executive branch to address the issue of gun violence by establishing a White House task force on gun violence prevention (GVP Task Force or the Task Force). This interagency task force—which should be established by the president via executive order (EO), co-chaired by the White House chief of staff, the US attorney general, and the secretary of Health and Human Services, and regularly staffed by a deputy assistant to the president—would bring together key leaders across the administration to develop a coordinated and sustained federal effort to address all aspects of gun violence in the United States.

The mission of this task force would be to identify opportunities across the federal government to address the gun violence epidemic more successfully, and oversee the implementation of executive actions, including regulatory reforms, new enforcement strategies, research and data collections, education and public awareness efforts, and new programmatic efforts to make meaningful change. The task force would also identify federal funding sources that can be leveraged to support gun violence prevention efforts at the state and local level.

The task force’s mission would also include working with state and local leaders—both elected officials and community stakeholders—to identify best practices and effective gun violence prevention programs, increase federal support for these efforts, and lift up the voices and stories of the communities most affected by gun violence.

Overview of process and time to enactment

Establishing a White House GVP task force is within the president’s authority and should be stood up within the first 100 days of the next administration, signaling a commitment to address the public health crisis of gun violence in America. To do that, the next president should issue an EO to create the GVP task force. The EO should include details related to the mission, membership, administration, and directives of the task force. In part, the task force would be responsible for producing a comprehensive set of executive action recommendations within three months of its establishment and members would be required to report regularly on the progress federal agencies are making in implementing recommendations.

II. Current state

There is currently no White House task force on gun violence prevention or any similar task force responsible for coordinating an interagency approach to fighting gun violence in the US. As such, the federal government's response to the gun violence epidemic is disjointed, occurring across a variety of federal agencies and policy issues areas. This reality creates both an organizational and policy-based justification for establishing a coordinating body within the White House.

A disjointed federal response to gun violence

With an average of 36,383 gun deaths, 100,000 gun injuries, and 393 million guns, America's gun violence epidemic far exceeds any comparable nation's.¹ From gun suicides to homicides, unintentional shootings, police shootings, urban gun violence, domestic violence, child access to firearms, and mass shootings, the full extent of the gun violence epidemic amounts to a complex and wide-ranging crisis falling under the direct purview of multiple government agencies.

For example, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for the enforcement and regulation of gun sales and dealers, crime gun tracing, and enforcing federal gun laws; the Federal Bureau of Investigation (FBI) is responsible for operating the National Instant Criminal Background Check System (NICS); the Department of Justice (DOJ) administers millions of dollars in federal grants that support local gun violence prevention efforts; the Department of Health and Human Services (HHS) is responsible for securing funding and conducting research to study gun violence as a public health crisis; and the Department of Education is responsible for ensuring the safety of America's schools. Given the multi-faceted nature of the gun violence epidemic in America and the overlap between key federal agencies responsible for mounting effective solutions, there is a need for a better coordinated response across the executive branch.

Previous White House task forces

Both Democratic and Republican administrations have established White House task forces by EO to make progress on key issues, offering a clear organizational and legal precedent for the next administration to follow a similar strategy. Past examples of task forces from the Obama and Trump administrations that could be used to model the GVP task force include the following.

Obama administration:

- **Federal Interagency Reentry Council.**² Established by President Obama via presidential memorandum in April 2016, the Federal Interagency Reentry Council was co-chaired by the attorney general and the director of the White House Domestic Policy Council (DPC). The Reentry Council's mission was to identify policies, strategies, programming, and research to improve the reentry of individuals following a term of imprisonment. The Reentry Council, which was made up entirely of government

¹ Giffords Law Center to Prevent Gun Violence, "Gun Violence Statistics," August 14, 2020, <https://lawcenter.giffords.org/facts/gun-violence-statistics/>.

² President Barack Obama, Presidential Memorandum, "Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals," April 29, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/04/29/presidential-memorandum-promoting-rehabilitation-and-reintegration>.

employees, was composed of the heads of a number of cabinet agencies and White House offices. It was directed to consult with local stakeholders at the state, local, and nongovernmental level to inform its work and was given authority to implement and promote policies to support successful reentry. The Reentry Council was required to present a federal strategic plan within 100 days of its creation, in addition to convening annually to further the Reentry Council's goals.³

- **The President's Task Force on 21st Century Policing.**⁴ Established by President Obama via EO in December 2014, the Task Force on 21st Century Policing was co-chaired by non-government employees and tasked with identifying and recommending best practices to promote effective crime reduction while building public trust, captured in a final report.⁵ As the task force included non-government appointees, it was only empowered to make recommendations. The task force was administratively supported, funded, staffed, and equipped by the Department of Justice (DOJ).
- **The White House Council on Women and Girls.**⁶ Established by President Obama via EO in March 2009, the White House Council on Women and Girls was chaired by the senior advisor and assistant to the president for intergovernmental affairs and public liaison. The Council on Women and Girls was tasked with providing a coordinated interagency response to issues impacting women and girls and had representatives from 26 federal agencies and entities—all government employees. The council served in an advisory role only, tasked with making policy recommendations, assisting in the development of legislation, and coordinating outreach with relevant organizations and agencies. The council was responsible for presenting a federal interagency report,⁷ and was tasked with providing relevant future updates, such as its 2016 annual report.⁸
- **The Task Force on Improving the Lives of Boys and Young Men of Color and Underserved Youth.**⁹ Established by President Obama via presidential memorandum in February 2014, "My Brother's Keeper" initiative was chaired by the assistant to the president and the White House cabinet secretary. The task force's mission was to improve education and life outcomes for young men of color and address the opportunity gaps they face. The task force, which was made up entirely of government employees,

³ The Federal Interagency Reentry Council, "A Record of Progress and a Roadmap for the Future," August 2016, <https://s3.amazonaws.com/static.nicic.gov/Library/032749.pdf>.

⁴ President Barack Obama, "Establishment of the President's Task Force on 21st Century Policing," Executive Order 13684, December 18, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/12/18/executive-order-establishment-presidents-task-force-21st-century-policin>.

⁵ The President's Task Force on 21st Century Policing, "Final Report," May 2015, https://eji.org/wp-content/uploads/2020/06/taskforce_finalreport.pdf.

⁶ President Barack Obama, "Creating the White House Council on Women and Girls," Executive Order 13506, March 11, 2009, <https://obamawhitehouse.archives.gov/the-press-office/executive-order-creating-white-house-council-women-and-girls>.

⁷ U.S. Department of Commerce, Economics and Statistics Administration, Executive Office of the President, Office of Management and Budget, "Women in America: Indicators of Social and Economic Well-Being," White House Council on Women and Girls, March 1, 2011, https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/Women_in_America.pdf.

⁸ The White House Council on Women and Girls, "Advancing Equity for Women and Girls of Color," December 2016, http://www.ncdsv.org/CWG_Advancing-Equity-for-Women-and-Girls_12-2016.pdf.

⁹ President Barack Obama, Presidential Memorandum, "Creating and Expanding Ladders of Opportunity for Boys and Young Men of Color," February 27, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/02/27/presidential-memorandum-creating-and-expanding-ladders-opportunity-boys->

was composed of 19 core members, empowered to perform various functions, including recommending federal policy reforms and creating a portal to collect ongoing criminal justice data. The task force was required to, *inter alia*, provide a report to the president summarizing the task force's progress within 90 days of its creation and 365 days after that.¹⁰

- **The White House Task Force on New Americans.**¹¹ Established by President Obama via presidential memorandum in November 2014, the White House Task Force on New Americans was co-chaired by the director of the Domestic Policy Council and the secretary of Homeland Security. The task force was composed of 16 core members—all government employees—and was empowered to recommend agency actions, measure and strengthen government services and programs, collect and disseminate data related to immigration, and provide technical assistance to federal grantees coordinating immigrant integration. The task force was required to deliver a series of proposed recommendations to the president within 120 days of its creation and a follow-up status report one year later. The task force's original report provided both an assessment of current programs and recommendations for future initiatives.¹²

Trump administration:

- **The Task Force on Missing and Murdered American Indians and Alaska Natives.**¹³ Established by President Trump via EO in December 2019, the Task Force on Missing and Murdered American Indians and Alaska Natives is co-chaired by the attorney general and the secretary of the Interior. This task force is responsible for improving the criminal justice system as it relates to the American Indian and Alaska Native communities—more specifically its impacts on missing and murdered indigenous women and girls. The task force is made up of six core members—all government employees—and is empowered to implement recommendations, consult with relevant tribal governments, develop new protocols, improve law enforcement response policies, establish a multi-disciplinary and multi-jurisdictional team to review previous cases, clarify relevant roles in investigations, and develop and execute outreach and education campaigns. The task force is also responsible for producing two forthcoming annual reports on its accomplishments and activities.
- **President's Commission on Combating Drug Addiction and the Opioid Crisis.**¹⁴ Established by President Trump via EO in March 2017, the commission was chaired by

¹⁰ My Brother's Keeper Task Force, "My Brother's Keeper Task Force Report to the President," May 28, 2014, https://obamawhitehouse.archives.gov/sites/default/files/docs/053014_mbk_report.pdf.

¹¹ President Barack Obama, Presidential Memorandum, "Creating Welcoming Communities and Fully Integrating Immigrants and Refugees," November 11, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/11/21/presidential-memorandum-creating-welcoming-communities-and-fully-integra>.

¹² White House Task Force on New Americans, "One Year Progress Report," December 15, 2015, https://obamawhitehouse.archives.gov/sites/default/files/image/tfna_progress_report_final_12_15_15.pdf.

¹³ President Donald Trump, "Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives," Executive Order 13898, November 26, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-12-02/pdf/2019-26178.pdf>.

¹⁴ President Donald Trump, Executive Order 13784, "Establishing the President's Commission on Combating Drug Addiction and the Opioid Crisis," March 29, 2017, <https://www.federalregister.gov/documents/2017/04/03/2017-06716/establishing-the-presidents-commission-on-combating-drug-addiction-and-the-opioid-crisis>.

the Governor of New Jersey. The commission's mission was to study the efficacy of the federal government's response to the opioid crisis and make recommendations to improve it. The commission was made up of both government and non-government employees, and included several other governors, a medical official, a state attorney general, and a member of Congress. The commission was directed to review current federal programs, examine the accessibility and affordability of addiction treatments, and identify best practices for addiction prevention. The commission was required to present an update to the president within 90 days of its creation, in addition to a final report presenting its recommendations and findings.¹⁵

- **The Task Force on Crime Reduction and Public Safety.**¹⁶ Established by President Trump via EO in February 2017, the Task Force on Crime Reduction and Public Safety was chaired by the attorney general, who was given full authority to appoint the task force's other members. The task force's mission was to develop strategies to reduce crime, identify weaknesses in current laws, and make recommendations to strengthen federal enforcement. The task force was required to deliver at least one report to the president on its progress and recommendations, but that report was not publicly released.¹⁷

III. Proposed action

To better coordinate the federal government's interagency response to gun violence in America, the next president should issue an EO establishing an interagency White House GVP task force. The EO should be issued, and the GVP task force should be established within the first 100 days of the administration.

In part, the task force would be responsible for producing a comprehensive set of executive-action recommendations within three months of its establishment, and members would be required to regularly report on progress the agencies are making in implementing the recommendations.

Establishing the GVP task force would send a clear signal to government agencies, Congress, and the American people that the next administration is making gun safety a top priority. It would also allow the administration to establish goals and outline actionable priorities that could be tracked within an established, time bound reporting structure —ensuring meaningful progress and accountability from government agencies.

Using examples from previous executive branch task forces as a guide, the following should be considered when issuing an EO forming the GVP task force.

¹⁵ President's Commission on Combating Drug Addiction and the Opioid Crisis, "Final Report," November 1, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf.

¹⁶ President Donald Trump, "Presidential Executive Order on a Task Force on Crime Reduction and Public Safety," Executive Order 13776, February 9, 2017, <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-task-force-crime-reduction-public-safety/>.

¹⁷ Brennan Center for Justice, "Crime and Safety Task Force Recommendations Should be Made Public," July 26, 2017, <https://www.brennancenter.org/our-work/analysis-opinion/crime-and-safety-task-force-recommendations-should-be-made-public>.

- Purpose and Mission. The mission of the GVP task force would be to identify opportunities across the federal government to address aspects of the gun-violence epidemic and establish a coordinated federal response to reduce gun violence in America. The GVP task force would be responsible for, *inter alia*, providing recommendations on gun safety executive actions, conducting an audit of existing gun safety grant programs, assisting in the development of the president's gun safety legislative agenda, and reporting back on the progress individual agencies are making to address all aspects of gun violence, including urban violence, mass shootings, domestic violence, suicide, police-involved shootings, and unintentional shootings.
- Membership. The task force would be composed of key leaders across the administration who have unique expertise and perspective on gun violence, including:
 - White House chief of staff (co-chair)
 - US attorney general (co-chair)
 - US secretary of Health and Human Services (co-chair)
 - ATF director
 - director of the Centers for Disease Control and Prevention
 - director of the National Institutes of Health
 - director of the Substance Abuse and Mental Health Services Administration
 - FBI director
 - secretary of Homeland Security
 - secretary of Housing and Urban Development
 - secretary of Education
 - secretary of the Interior
 - secretary of Veterans Affairs
 - secretary of Defense
 - secretary of Commerce
 - surgeon general
 - senior White House officials, including the director of the Office of Management and Budget, the director of the Domestic Policy Council, the assistant to the president for Intergovernmental Affairs, the assistant to the president for Legislative Affairs, and the director of the Office of Public Engagement.

Members of the task force would have authority to designate a senior-level official who is a part of the member's department, agency, or office, to perform the functions of the member.

- Administration. The GVP task force would be supported administratively by the Executive Office of the President for funds, facilities, staff, equipment, and other support services necessary to carry out its mission. The co-chairs would convene regular meetings of the task force, determine its agenda, and direct its work. At the direction of the co-chairs, the task force would have authority to establish subgroups consisting exclusively of task force members or their designees.
- Staffing. While the task force would be co-chaired by the White House chief of staff, attorney general, and the secretary of Health and Human Services, its day-to-day operations would be managed by a deputy assistant to the president, reporting directly to the chief of staff and serving as the task force's executive director. This individual should have experience working on gun violence prevention issues and be well positioned to bring the full weight of the White House to bear on the task force's work,

including by coordinating among the Office of the Chief of Staff, the DPC, the White House Office of Legislative Affairs, the Office of the White House Counsel, and the White House Office of Public Engagement and Intergovernmental Affairs.

- **Functions.** The GVP task force would be tasked with the following functions, which should be included in the EO creating the task force.
 - **Assist in the development of the president’s legislative agenda.** The GVP task force should advise the White House on the president’s gun safety legislative agenda, including the president’s 100-day priorities. This would include analyzing potential legislation, engaging key stakeholders, and coordinating a legislative strategy with congressional leaders.
 - **Recommend an action report to the president.** Within three months of its inception, the task force would be tasked with presenting to the president a federal interagency plan with recommendations for executive action consistent with the goal of reducing gun violence. The plan would include: (1) an assessment of major federal programs, offices, policies, and data sources concerning gun violence and gun safety, (2) recommendations for executive action across government agencies, including regulatory and subregulatory actions, (3) a recommended timeline for proposed action, and (4) recommendations for issues, programs, or initiatives that should be further evaluated or studied by the task force.
 - **Review grant funding.** The GVP task force would be tasked with conducting a comprehensive analysis of how current federal grant programs are being used to invest in community-based violence intervention programs, including recommendations for how agencies can use existing authority to increase investment in these programs, including group violence interventions, street interruption or outreach programs, and hospital-based violence intervention programs.¹⁸
 - **Advise the HHS secretary regarding PHE determinations.** Under the Public Health Service Act, the secretary of HHS can declare a public health emergency (PHE) if certain criteria are met.¹⁹ Once the secretary declares a PHE, HHS can take action to respond to the PHE, including by making grants, entering into contracts, and conducting investigations into the cause, treatment, or prevention of the disease or disorder. In addition, the secretary may access funds appropriated to the Public Health Emergency Fund.²⁰ In making this determination, the secretary may “consult[] with such public health officials as may be necessary.”²¹ The GVP task force would serve in this advisory role, providing expertise to the HHS secretary in making PHE determinations on the basis of spikes in gun violence.²²

¹⁸ See, e.g., Giffords Law Center, “Intervention Strategies,” accessed August 20, 2020, <https://lawcenter.giffords.org/gun-laws/policy-areas/other-laws-policies/intervention-strategies/>.

¹⁹ 42 U.S.C. § 247d.

²⁰ *Id.*

²¹ 42 U.S.C. § 247(f)(1).

²² See “Recommended Action Memo: Declare public health emergencies in areas where shootings and gun homicides are greatest, and use the authority pursuant to those declarations to address those

- **Engage external stakeholders.** In accordance with applicable law, including the Federal Advisory Committee Act (FACA),²³ and in addition to regular meetings, the GVP task force would consult with external stakeholders, including gun violence survivors and advocacy groups, student groups, veterans, parents, local community organizations, and state and local officials.
- **Create a GVP task force website.** The GVP task force would create a domain on the White House website to publicize its work. The website would include the latest gun violence statistics, provide access to gun safety resources, and highlight announcements about the GVP task force’s progress and recommendations.
- **Deliver bi-annual status update reports.** After submitting a recommended action report to the president, the GVP task force would be charged with delivering quarterly status updates to the president. Similar to the annual reports submitted by the White House Task Force on New Americans,²⁴ these reports would include a detailed account of the task force’s progress toward delivering on its recommendations.

IV. Legal justification

Establishing a White House GVP task force is squarely within the president’s authority, and would follow similar models of past administrations in establishing task forces to confront urgent issues facing the nation.

The power to create task forces draws on the president’s Article II powers. Article II, Section 2 of the US Constitution allows the president to “require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices,” which includes cabinet members, who head executive departments. Article II, Section 3 speaks to the president’s power to convene and report to Congress issues that concern him.

Executive orders and presidential memorandums

Past presidents have established White House task forces using either EOs²⁵ or presidential memorandums.²⁶ As the DOJ’s Office of Legal Counsel has consistently held,

emergencies,” <https://giffords.org/wp-content/uploads/2020/11/Declare-public-health-emergencies-in-areas-where-shootings-and-gun-homicides-are-greatest-and-use-the-authority-pursuant-to-those-declarations-to-address-those-emergencies.pdf>.

²³ Pub. L. 92–463, 86 Stat. 770.

²⁴ White House Task Force on New Americans, “One Year Progress Report,” December 15, 2015, https://obamawhitehouse.archives.gov/sites/default/files/image/tfna_progress_report_final_12_15_15.pdf.

²⁵ See e.g., President Barack Obama, “Establishment of the President’s Task Force on 21st Century Policing,” Executive Order 13684, December 18, 2014; President Barack Obama, “Creating the White House Council on Women and Girls,” Executive Order 13506, March 11, 2009.

²⁶ See e.g., President Barack Obama, Presidential Memorandum, “Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals,” April 29, 2016; President Barack Obama, Presidential Memorandum, “Creating and Expanding Ladders of Opportunity for Boys and Young Men of Color,” February 27, 2014.

“there is no substantive difference in the legal effectiveness of an executive order and a presidential [memorandum] that is not styled as an executive order.”²⁷

As such, whether the next administration creates the GVP task force via EO or presidential memorandum will have no substantive legal effect on the task force’s work. However, we recommend the GVP task force be established via EO, as it will send a stronger signal to the public and to federal agencies that its work is a high priority.

Federal Advisory Committee Act

The GVP task force will not be subject to the requirements of the FACA.²⁸ Enacted in 1972, the FACA seeks to promote transparency into the workings of the “numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch.”²⁹

FACA imposes a variety of requirements on “advisory committees,” which are defined to include “any committee...which is...established or utilized by the President, or...by one or more agencies, in the interest of obtaining advice or recommendations.”³⁰ Advisory committees are subject to FACA’s requirements unless specifically exempted by statute.³¹ While FACA applies to presidential advisory commissions in the same way as it applies to agency-created advisory commissions, the law excludes from its coverage a committee that is composed wholly of government employees.³² As the GVP task force outlined above would be composed wholly of government employees, it would not be subject to FACA.

This remains true even if members of the GVP task force seek input from individuals and organizations. In order for FACA to apply, the government must receive *consensus group advice*, as opposed to *individual advice*.³³ For example, in *Association of American Physicians and Surgeons v. Hillary Clinton*, the US Court of Appeals for the DC Circuit held that when members of a group composed of federal officials held forums with non-federal stakeholders to gather information, the meetings did not violate FACA, because no effort was made to reach a consensus, or bring a collective judgment to bear.³⁴ The same would be true for the GVP task force: as stakeholder meetings would be used by government officials to gather information from organizations and individuals—and not as a means to garner consensus recommendations—FACA’s requirements would not apply.

²⁷ Off. Legal Counsel, “Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order,” January 29, 2000, <https://www.justice.gov/file/19436/download>.

²⁸ Pub. L. 92–463, 86 Stat. 770.

²⁹ 5 U.S.C. App. 2 § 2(a).

³⁰ 5 U.S.C. App. 2 § 3(2).

³¹ *Id.* § 4.

³² *Id.*

³³ See e.g., 41 C.F.R. § 102-3.40(e) (group of individuals “assembled to provide individual advice” is not a committee subject to FACA); see also *In re Cheney*, 406 F.3d at 730–31 (holding task force subgroups were not FACA committees in part because their meetings with individuals who were not federal employees did not “involve deliberations or any effort to achieve consensus on advice or recommendations” but merely “collect[ed] individual views”); *Nader v. Baroody*, 396 F. Supp. 1231, 1234 (D.D.C. 1975) (meetings between an Assistant to the President and various executive branch officials and special interest groups, held for the purpose of exchanging views, did not constitute an advisory committee under FACA; alleged committees “were not formally organized and there is little or no continuity”).

³⁴ *Ass’n of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898, 913-14 (D.C. Cir. 1993).