

# TEXAS DEFENDER

AN AFFILIATE OF THE TEXAS COUNCIL OF CLUBS AND INDEPENDENTS



## ANOTHER WIN FOR BIKERS IN CENTRAL TEXAS BIKER WINS SETTLEMENT FOR PROFILING STOP

Edition #5

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On a warm spring evening May 22nd, 2018, a member of the Renatus Motorcycle Club, Spark, was heading south on TX Toll Road 130 between Georgetown and Pflugerville. As many can testify, that particular stretch of road is straight, rarely congested that time of night, and can tempt even the most conservative rider to crack the throttle open a bit. Inevitably, the flashing DPS patrol car lights lit up his mirrors as he was being pulled over for speeding. Nothing outrageous. Nothing anyone would consider criminal. What followed was clear violation of Spark's rights and an example of what Texas bikers increasingly face.

(A full video of the stop can be watched at [https://www.facebook.com/txcoci/videos/?ref=page\\_internal](https://www.facebook.com/txcoci/videos/?ref=page_internal))

Once all vehicles had come to a stop, the DPS Trooper instructed Spark to remove his helmet and to step off of his bike. Within a minute, the interrogation began. When watching the video you will see that in 2 minutes and 16 seconds the lead DPS Trooper asked approximately 29 questions. Aside from the procedural requests, that is over 25 questions in which the Trooper is looking for guilt or collecting data. Those questions were all from the usual playlist, like "Where is your club out of?"; "What does the (insert officer title here) do?"; "What's illegal on your bike?"; and "Where are you coming from/going to?". The officers pressed by asking to search the bike and biker but was dismayed when their request for consent to search was denied.

The troopers insisted on a pat down to "keep the scene safe". The pat down resulted in the surrender of beer salt, a koozie, reading glasses, a condom, and a pocket Constitution. Imagine their surprise in finding the Constitution when they are looking for weapons. Not happy with results, the two DPS troopers retreat to the patrol vehicle to discuss next steps, leaving Spark to stand in

### Update: Legislative Outreach

In Austin, Paul and Clutch are actively meeting with Representatives and Senators from your Region but they need your help. It is always best to have a constituent from each District attend the call to offer substantive commentary on the events going on locally. If you would like to be apart of the conversation, reach out to Clutch at [chris@txcoci.com](mailto:chris@txcoci.com) for further information.

### Current Region Score:

Region 1:	(1) House Rep
Region 2:	/
Region 3:	/
Region 4:	/
Region 5:	/
Region 6:	/
Region 7:	/
Region 8:	(1) House Rep
Region 9:	/
Region 10/11:	(1) Senator
Region 12:	(1) House Rep

Senate:	31
House of Representatives:	150

knee high grass to fight the pterodactyl size Texas mosquitos and potential Chupacabra. Instead of writing the ticket and sending Spark on is way, the two DPS Troopers discuss Spark's questionable body language as he waits patiently for them to come back. Based on unfounded suspicion and a "made for bad tv" hunch, the lead Trooper decides to call for a K-9 unit. He requests the other DPS Trooper to call for a K-9 unit as he heads off to interview Spark. The lead DPS Trooper knows he cannot extend the stop longer than it takes to reasonably effectuate the reason for the stop, but makes the effort to buy time for the K-9 unit to arrive by engaging Spark in conversation.

About 9 minutes into the stop the lead DPS Trooper informs Spark that he is calling the K-9 Unit. Because it is late, Spark consents to a search by the current Troopers on the scene but they refuse and want to wait for the K-9 unit, because the Trooper "*understands case law*" and respects his previous dissent. The lead DPS Trooper continues to ask questions unrelated to the stop to keep Spark engaged. Thirty-four minutes into the stop the K-9 Unit finally arrives and hits on nothing. Multiple times around the motorcycle and not one hint of a hit. After 41 minutes, Spark was finally given his ticket for speeding and allowed to head home. Video shows that at 11 minutes into the stop, the lead DPS Trooper verbalized that he was going to give Spark a speeding ticket but held him on the side of a major Texas toll road for an additional 30 minutes for nothing more than a hunch encouraged by the inexperienced Trooper he was meant to be training.

Spark filed a lawsuit alleging violations of his 4th amendment rights and illegal detainment. The State of Texas filed their response and then followed with a motion to dismiss. When the judge viewed the video evidence, he denied the State's motion and wrote in his denial that all the video evidence verified the plaintiff's version of events and found no supporting evidence of the officers allegations of what happened. Specifically alleging that the plaintiff was "*vague in his responses, looked nervous, and didn't make eye contact*", none of which is probable cause according to several Supreme Court cases.

It was reported that during the deposition of the lead DPS Trooper, that his demeanor inside that corporate office in full daylight were noticeably more evasive than Spark's on the side of road with two police flashlights in his face. In the deposition the officer stated he "*no longer worked for the DPS*" and was running security at his local church. In follow up, when asked, the DPS Trooper could not explain how a pocket Constitution felt like a weapon.

Ironically, Spark offered to settle the lawsuit for the large sum

The 2021 Legislative Session is fast approaching. This the time To get to know your local politicians. Get involved in their Campaigns, get on their mailing lists, and get to know their staff however you can during these restrictive times. Our date is locked in for January 25, 2021 from 12pm to 4pm on the Capitol steps.

Region 1 is currently working on securing discounted hotel rooms and finalizing the best route. KSU information to follow.



#### UPDATE FROM WACO

On October 5<sup>th</sup>, the Fifth Circuit panel heard arguments over the question of qualified immunity of state actors relating to the arrests and prolonged detainment of those bikers filing civil lawsuits. The panel of judges were reported to have mixed reactions and opinions. The judges have not handed down a decision yet so we continue to wait. More information regarding the

of an apology letter from the DPS Troopers involved. They quickly dismissed this offer and filed their motion to dismiss the entire case. That request for dismissal was denied and the State asked to settle the lawsuit the very next day. If the DPS Troopers would have admitted wrongdoing, the taxpayer expense of court time and eventual settlement dollars could have been avoided.

Spark admits that he should have asserted his right to remain silent from the beginning but that's not how this story played out. To quote Spark after the whole ordeal, *"Stay safe, know your rights, and never be afraid to use them"*.

The result of this suit also garnered the attention of the *Houston Chronicle* and they have released their own story on *"Why most police vehicle searches in Texas turn up nothing"*. In that story, Major Mike Lee, who oversees the Harris County Sheriff's Office's Patrol Bureau is quoted as saying *"I think the payoff is not worth it. We stop a thousand cars a day. And we make a great arrest that day and we put it all over social media. But in the meantime, you pissed off 999 citizens who may have all been pro-law enforcement before you stop them, and now have such a bad taste in their mouth after that stop."*

*At the end of the day, we lose."*

....Or, In Spark's case, they'll have to contribute \$11,000 towards his new bike.

<https://www.houstonchronicle.com/politics/texas/article/why-police-vehicle-searches-in-Texas-nothing-15631045.php>

The link for the pocket Constitution mentioned in this story is included below.

<https://www.cato.org/books/cato-pocket-constitution>



process can be read at:

<https://www.courthousenews.com/panel-hears-debate-over-immunity-for-ex-da-in-texas-shootout-case/>

## NEWS FROM AROUND THE STATE

### **Another win for the Second Amendment**

On September 28, 2020 a judge in Seventh Court of Appeals of Texas overturned a conviction of a Class A misdemeanor for unlawful carrying of a weapon. This stems from an incident in which the defendant, a self-identified member of a motorcycle club recognized by Texas law enforcement as a criminal street gang, was pulled over for *"speeding, making an unsafe lane change, and having a partially obscured license plate."* The biker volunteered the information regarding the weapon, carried legally by all other means, during the stop which originally led to the conviction.

Ultimately, the judge ruled that even though the biker identified as a criminal street gang according to law enforcement that *"both gang membership and a connection to criminal conduct are required. This single arrest, on charges which were later dismissed, does not establish that the appellant continuously or regulatory associated in the commission of criminal*

# MOTORCYCLE RIDERS FOUNDATION UPDATE

## Meeting of the Minds



From September 24 to September 27, 2020 the Motorcycle Riders Foundation had their annual Meeting of the Minds in Indianapolis, IN. This year members of the TCOC&I Advisory Team were invited to participate and identify ways the motorcycling community in Texas has begun to right the ship post-Waco. Additionally, to share the legislative plan and how Independents will continue to be a major contributor to motorcycle rights advocacy nationwide. The meeting is largely attended by

Independents from across the country, as members of their local ABATEs and other State Motorcycle Rights Organizations (SMROs) come together to work with the MRF to establish a legislative agenda for the next year. Moving forward, members of the MC community across the nation will be encouraged to participate to help unify our legislative voice.

A message from the MRF regarding the results of that meeting:

### Legislative Agenda set during Meeting of the Minds 2020

*“One of the most important events at Meeting of the Minds is the legislative strategy session. Each year, during this session, state motorcycle rights groups develop the federal legislative priorities for the following year. Items are discussed, debated and eventually voted on, with each Sustaining State Motorcyclists’ Rights Organization (SSMRO) having a voice and a vote. Legislative priorities are placed in one of three categories, “High,” “Medium” and “Monitor”. These priorities will serve as a roadmap, for the Motorcycle Riders Foundation Washington D.C. team, as we focus on 2021.*

*While you can see the full detailed list of priorities in the next American Bikers’ Journal, below is brief preview of the “High” priority items approved during the session.*

activities”.

TCOC&I will continue to monitor legislation presented in 2021 that is submitted to derail your Second Amendment rights without the right of due process. Get involved and stay involved!

Full Article:

<https://www.lubbockonline.com/news/20201006/lubbock-motorcycle-gang-member-acquitted-of-misdemeanor-weapons-charge>



### 2020 NATIONAL MOTORCYCLE PROFILING SURVEY

It is that time again. We absolutely need everyone's participation. 2020 starts a new year where the information collected strengthens our fight at the Capitol for the 2021 Legislative Session. Battles are won through information, planning, and skilled follow through. The fight we face in 2021 is no different. We challenge each club, each club member, and every independent to take 30 seconds and complete this survey. Even if you have completed it in years past, each

**Profiling:** Continue pursuit of the House anti-profiling resolution mirroring the Senate version that passed unanimously. Build momentum for inclusion of anti-profiling language in other legislation.

**Renewable Fuels:** Advocate for targeted changes to the Renewable Fuel Standard (RFS).

**Autonomous Vehicles:** Advocate and monitor any legislation or regulations related to motorcycles concerning connected and autonomous vehicles.

**Emission Regulations:** Engage the EPA & Congress on any activity related to motorcycle emission regulations.

**Definition of a Motorcycle:** Educate policymakers and advocate for change to current definition, that better reflects the current two- and three-wheel motorcycle landscape.

**Crash Avoidance:** Continue to promote the theme of crash avoidance versus safer crashing urging NHTSA and the DOT to focus on crash prevention and rider education.

**Helmet Laws:** Oppose any mandatory federal helmet, apparel or conspicuity standards.

**Black Box:** Pursue legislative language that any collected or available vehicle data is the property of the consumer and in which the consumer has the choice to opt-out of having their personal data communicated to interested parties.

**Surface Transportation Reauthorization (Highway Bill):** Advocate and pursue legislative efforts that impact motorcyclists in the Highway Bill, now set to expire in 2021.

Remember, as part of your MRF membership you receive an issue of each American Bikers' Journal (ABJ). Not a Member of MRF? Click here and join today! The next ABJ is where you will find more details on these specific priorities, as well as the list of over a dozen other priorities in the "Medium" or "Monitor" categories.

Looks like 2021 will be a busy year!"

year is its own. Even if you have never been profiled, your contributions offer validity. If you have been profiled, your voice needs to be heard. Currently, Texas leads the nation in total responses. Preliminary results show that over 85% over respondents believe there should be some legislation passed protecting motorcyclists from being targeted based on what they are wearing, what meetings they attend, or their affiliation. In addition, it is the highest percentage of independent respondents, 100% completion rate, and number of 1%ers completing. Complete it and share it. We cannot do this without you.

**Survey:**

<https://www.surveymonkey.com/r/2020nmps>

**Motorcycle Profiling Project:**

[www.motorcycleprofilingproject.com/](http://www.motorcycleprofilingproject.com/)



***A message from Texas Council of Clubs & Independents regarding  
Motorcycle Riders Foundation***

Over the years the Texas Council of Clubs & Independents have proceeded with caution when moving forward with legislative partnerships. We as a community can be understandably cautious who we offer our energy, our time, and sometimes, our hard-earned money to in the name of protecting our rights. Over the past few years, we have witnessed the dedication of the Motorcycle Riders Foundation volunteers and lobbying partners to properly represent the needs of not just motorcyclists, but bikers on Capitol Hill. ***They currently serve as our only direct voice in D.C. when it comes to protecting bikers' rights.*** Because of that we, encourage each club and independent rider who reads this to visit their website and become a Club or individual sustaining member. We will continue to work closely with them in the future and are excited to see how Texas can help advance the rights of bikers nationwide.

<https://mrf.org/join-the-mrf/>

A Sincere thank you from  
*Texas Council of Clubs & Independents,  
Texas Defenders, TCOC&I Christian Unity,  
Coalition of Independent Riders, and  
Motorcycle Safety & Awareness.*

**Current Texas 2020 Sustaining Members**

**Texas**

- Texas ABATE Confederation
- Texas ABATE - Arlington
- Texas ABATE -Texoma
- [Texas Council of Clubs & Independents](#)
- Escondidos MC
- [Wolverines MC](#)
- Grim Guardian Motorcycle Club
- [TCOC & I Region 2](#)

<https://mrf.org/sustaining-members/>

**DON'T FORGET TO  
ORDER YOUR  
"LOUD BIKERS  
SAVE RIGHTS" T-  
SHIRTS**

All proceeds will be used to offset expenses related to Texas Biker Legislative Day 2021 and administrative costs associated with Public Information Requests.

<https://txcoci.com/store/>



**We Currently have  
Challenge Coins  
and  
Stickers Available!!**

# LEGISLATIVE AGENDA FOR TEXAS COC&I IN 2021

## Texas Gang Database Transparency Accountability Act of 2021

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### Constitutional Concerns

*Texas Code of Criminal Procedure, Chapter 67 – “Compilation of Information Pertaining to Combinations and Criminal Street Gangs,” specifically problematic:*

- **Submission Criteria:** This provision unconstitutionally allows law enforcement to label someone a member of a “criminal street gang” based on hearsay, tattoos, and/or Facebook posts *without regard to whether law enforcement has any information to base a reasonable belief the person is involved in criminal activity.*
- **Right to Request Existence of Criminal Information:** This provision is at issue because being labeled a member of a criminal street gang affects Texan’s Second Amendment protected right to bear arms. One cannot carry a handgun in his vehicle if he has been labeled a gang member in TXGANG. To strip someone of that substantive liberty interest, *law enforcement should first have to notify the person that he is being input into TXGANG and give the person an opportunity to challenge the designation.* The current version of the statute does not require law enforcement to notify people when they are input into TXGANG
- **Right to Request Review of Criminal Information:** This provision is a constitutionally *deficient method to challenge one’s inclusion into TXGANG, which does not satisfy the Constitutional right to Due Process.*
- **Judicial Review:** This provision is a constitutionally *deficient method to challenge one’s inclusion into TXGANG, which does not satisfy the Constitutional right to Due Process, because it does not require the Rules of Evidence to apply to an evidentiary hearing,* wherein the parties have the right to present evidence, cross-examine witnesses, with the right to discovery

### Examples of Rights affected by being labeled a member of a “criminal street gang”:

- A judge can order probationers to not associate with those labeled as members of a criminal street gang
- A judge can order a probationer that was input into the TXGANG as a member of a criminal street gang to submit to electronic monitoring as a condition of probation because of that designation
- A person labeled as a member of a criminal street gang may not avail themselves of the defense of consent for a mutual combat situation (i.e. fist fight)

- A personal labeled as a member of a **criminal street gang cannot carry a handgun in their motor vehicle in Texas** (read with the Second Amendment to the United States Constitution)

*(Legal evaluation by Millie Thompson, 2020)*

## **Anti-Motorcycle Profiling Legislation of 2021**

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**Definition:** Motorcycle Profiling means the illegal use of the fact that a person rides motorcycle or wears motorcycle-related paraphernalia as a factor in deciding to stop and question, take enforcement action, arrest or search a person or vehicle, with or without a legal basis under the State or US Constitution. Motorcycle profiling amounts to a publicly funded campaign of discrimination.

### **Constitutional Concerns**

- Motorcycle profiling violates the 1<sup>st</sup> amendment. Profiling relies on appearance to establish suspicion as opposed to the legal requirement of conduct. This amounts to discrimination of a group defined by protected expression and association. Federal courts have ruled wearing a motorcycle patch, symbols, designs, or writing is protected free speech, regardless of its perceived popularity.
- Motorcycle profiling violates the 14<sup>th</sup> amendment. Federal court rulings made a clear distinction between discriminatory stops and mere investigatory stops. The court said, “*The Constitution prohibits selective enforcement of the law*”. Although the 4<sup>th</sup> Amendment is not the proper basis for a selective enforcement complaint, discriminatory or selective enforcement stops are a violation of the Due Process and Equal Protection clauses of the 14<sup>th</sup> Amendment.

### **Proposed Solutions Help Everyone Involved**

- Enacting anti-profiling legislation would require state and local law enforcement to adopt a written policy to condemn and prevent the act of motorcycle profiling. This, with instituted basic training, will offer a highly effective, no cost deterrent without preventing law enforcement from doing their job.
- Anti-profiling legislation eliminates gross resource mismanagement and reduces the State’s exposure to civil liabilities.
- Anti-profiling legislation closes loopholes in existing law that allow profiling to continue.
- Anti-profiling legislation reinforces Constitutional policing, responsible management of resources, focus on conduct and behavior as opposed to appearance, **and helps repair the relationship between law enforcement and the community.**

*(Motorcycle Profiling Project, 2019)*

**Survey Data will be provided as the year comes to an end. Please have everyone complete the Motorcycle Profiling Survey.**

## **Potential re-Introduction of HB 482 from 2019 Legislative Session**

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*“Relating to a limitation on the authority to arrest a person for certain misdemeanors*

***punishable by fine only.”***

- Ensures simple traffic violations and Class C misdemeanors are punishable by fine and not subject to arrest.
- These provisions, originally cut out of the Sandra Bland Act in 2019, had large bi-partisan report
- This legislation will protect this community from coercion by officers to conduct otherwise declined consent for personal or vehicular searches.
- Will work together with motorcycle profiling legislation to limit the number of motorcycle only stops leading to arrest and/or unconstitutional data collection.
- Does not interfere with an officer’s ability to arrest those suspected for public intoxication, assault, or where someone presents “ a clear and immediate danger”
- Will **help repair the relationship between law enforcement and the community.**

(HB 482, 2019 legislative session.

<https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=86R&Bill=HB482>

<https://www.texasobserver.org/the-sandra-bland-act-was-stripped-of-the-provision-that-couldve-prevented-her-arrest-now-it-has-a-chance/>

## **Keeping Our Eyes on the Prize**

Last legislative session was consumed by your incredible efforts to kill two bills introduced that would have severely threatened this community and the freedom to exercise the Second Amendment and the ability to ride without harassment. We will continue to monitor these attempts to sneak in these rights infringing bills as well as keeping you informed on what you can do to continue to secure your freedoms in Texas.

## **TEXAS GANG INTELLIGENCE INDEX (TXGANG)**

We are continuing to collect information from you regarding your admittance into TXGANG. Heading into the 2021 Legislative session were working with legislators with proposed legislation designed to hold submitting authorities accountable for how members of our community are entered into the database and clarify a path to being removed. Over the next few months, we will discuss the details of this proposed legislation at regional meetings. Currently we have knowledge of seven members of the community in various parts of the State that should not be listed and are. Two members have challenged this inclusion in federal court and have received favorable responses from the judges, a couple of others are in the process of challenging, and we wait to hear how the others plan to fight.

If you have been pulled over and had pictures taken of your tattoos, your bike, and of your clothing; or know of someone who has, please reach out to us via the TCOC&I website and complete an incident report <https://txcoci.com/incident-report/> . We may be able to request camera footage via the Public Information Request process. Secondly, all members of this community submit a formal request to see if you are indeed included in the Texas Gang Intelligence Index (TXGANG). Based on the criteria required to be submitted to the database, the information requested during the process will not place you in the database simply for asking.

Follow the steps below to request that information. **WE HAVE CONFIRMED THAT THIS PROCESS DOES NOT THEN GET YOU ENTERED INTO THE DATABASE.**

1. Go to this web address: [dps.texas.gov/GeneralCounsel/contact/index.htm](https://dps.texas.gov/GeneralCounsel/contact/index.htm).
2. Now you should be on a very simple page that says, "Public Information Request" and has a drop-down box in which you scroll all the way to the bottom and choose "Other."
3. This will bring up a page in which you will enter your name and other contact information, as well as a description of the requested information. In the box about the requested information, type the following: *"This request is to determine whether I am listed on the TX Gang or Criminal Intelligence database. If I am listed in the database, I would like to know which agency submitted my name to the database and when they submitted it."*
4. After you submit this, someone from DPS will contact you and ask a few questions to confirm your identity. This is because the information cannot be released to anyone but you.
  - Complete Name
  - Date of Birth
  - Race/Sex
  - Driver's License Number or ID Number
  - Relationship to the subject of the record (if not self)
5. The response will read one of two ways:
  - a. *"Based on the personal descriptors provided, the Department conducted a search of the TX Gang database on [DATE], and found a record matching the identifiers provided in your request below."*  
**OR**
  - b. *"In response to your request below, the Department conducted a search on the personal descriptors provided within that request. As of [DATE], there were no records found within the TXGang database matching the information provided."*

**IF YOU OR A CLUB MEMBER HAVE BEEN CONFIRMED AS INCLUDED  
IN THE DATABASE PLEASE REACH OUT TO US AT**

**[TEXASDEFENDERS@TXCOCI.COM](mailto:TEXASDEFENDERS@TXCOCI.COM)**

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