

BOMB THREATS AND BAG CHECKS: MODEL LEGISLATION TO ADDRESS VENUE SAFETY AND LIABILITY

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INTRODUCTION.....	441
I. RECENT VIOLENT INCIDENTS AT EVENT VENUES AND TORT LIABILITY	442
A. Recent Violent Incidents at Event Venues	442
B. Tort Actions Against Venue Owners and Promoters	447
II. EXAMPLES OF EXISTING VENUE SECURITY LEGISLATION AND MODEL CODES	450
A. Existing Venue Security Legislation.....	450
B. Existing Model Venue Safety Code Sources	452
III. FIRE SAFETY LEGISLATION AND REGULATIONS: A RESPONSE TO TRAGEDY	456
A. The Station Nightclub Fire.....	457
B. Model Code and Legislative Responses to the Station Nightclub Fire.....	458
IV. PROPOSED MODEL VENUE SECURITY LEGISLATION.....	462
V. REASONING BEHIND THE MODEL VENUE SECURITY LEGISLATION.....	466
A. Composition of the Board	466
B. Public Hearings, Review, and Amendment.....	467
C. Capacity.....	468
D. Designation of Roles	469
CONCLUSION	470

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INTRODUCTION

Safety at live event and music festival venues has become a matter of increasing concern in recent years. Concerts end abruptly and are evacuated due to security concerns, such as bomb threats.¹ Security checkpoints including metal detector wands and bag searches create bottlenecked crowds as attendees express concerns about the number of security personnel available.² Concert promoters and venue owners try to find a balance between keeping concert expenses low while trying to train security personnel and secure multiple building entrances.³ Artists cancel meet and greets with fans due to security concerns.⁴ Large venues install greater security measures, such as metal detectors, and raise ticket surcharges while smaller venues weigh the costs of installing security devices versus the risk of violence when the crowd numbers are in the low hundreds or mainly consist of young teenagers.⁵ As concert attendance numbers grow and concert security issues become evident and more frequent, how can event venue owners and promoters keep attendees and performers safe in a uniform manner?

This Note offers state legislatures a proposed model venue security act that addresses safety issues arising from venue violence. Part I of the Note addresses the problem of violence within event venues and festivals and common concerns highlighted by such incidents, such as artist safety, event attendee safety, and crowd safety during evacuations. Part I also examines the emergence of tort actions by concert attendees against venue owners and

1. See *Indiana Police Say Bomb Threat Halted Rascal Flatts Concert*, AP NEWS (Aug. 14, 2018), <https://apnews.com/74c80c525d8941c49e5b7d94fd6e4e4f> [<https://perma.cc/F9HJ-4GKQ>]; David Lindquist, *What Prompted 'Safety Concern' and Abrupt End to Rascal Flatts Show Remains Unclear*, INDYSTAR (Aug. 10 2018, 1:13 AM), <https://www.indystar.com/story/entertainment/music/2018/08/10/abrupt-end-rascal-flatts-concert-leaves-indiana-fans-puzzled/954328002/> [<https://perma.cc/RQ3H-JZCR>]; Variety Staff, *The Roots' SXSW Concert Canceled Due to 'Security Concern'*, VARIETY (Mar. 17, 2018, 9:15 AM), <https://variety.com/2018/music/news/the-roots-sxsw-concert-cancelled-due-to-security-concern-1202729636/> [<https://perma.cc/9QJW-MFBE>].

2. See *Concert Goers Wait in Lengthy Lines Before Beyonce & Jay-Z Show*, NEWS CHANNEL 5 NETWORK (Aug. 23, 2018, 9:42 PM), <https://www.newschannel5.com/news/concert-goers-wait-in-lengthy-lines-before-beyonce-jay-z-show> [<https://perma.cc/U89Z-3SCG>].

3. See Ray Waddell, *Security Experts on the 'New Normal': Challenges and Logistics of Concert Safety in the Wake of Orlando Shootings*, BILLBOARD (June 14, 2016), <https://www.billboard.com/articles/news/7407926/security-experts-new-normal-challenges-and-logistics-concert-safety> [<https://perma.cc/D9TG-JHU9>].

4. See Jason Chervokas & Vanessa Wilkins, *Justin Bieber Cancels Tour Meet-and-Greets*, ABC NEWS (Mar. 23, 2016, 2:20 PM), <https://abcnews.go.com/Entertainment/justin-bieber-cancels-tour-meet-greets/story?id=37866933> [<https://perma.cc/8PDN-KW22>].

5. See Ben Sisario, *New Reality After Orlando Attacks: Dogs, Metal Detectors and Searches at Public Gatherings*, N.Y. TIMES (June 13, 2016), <https://www.nytimes.com/2016/06/14/us/new-reality-after-orlando-attacks-dogs-metal-detectors-and-searches-at-public-gatherings.html> [<https://perma.cc/8AYU-DDCL>].

promoters in the wake of violent incidents. Part II of the Note examines the current state of event security legislation, event safety suggested guidelines from the Event Safety Alliance and the Events Industry Forum, and the ways in which existing legislation fails to adequately prepare event venue owners and promoters to provide sufficient security measures. Part III of the Note explores the manner in which a major venue fire shaped legislation and regulations in Rhode Island and Massachusetts as to fire safety, providing a useful illustration of how legislation can address safety issues connected with acts of violence. Part IV presents model legislation aimed to better regulate venue security and to address associated liability issues. Finally, Part V addresses the reasoning behind the model legislation.

I. RECENT VIOLENT INCIDENTS AT EVENT VENUES AND TORT LIABILITY

Recent violent incidents at venues and the crowd panic after perceived danger at live events demonstrate how unpreparedness for potential violence can cause unnecessary loss of life and injuries. Violent incidents at venues have already raised questions of whether venue owners and promoters should face tort liability. As more violence against artists and attendees at live events occurs, such incidents will become even more reasonably foreseeable and could continue to open up venue owners and promoters to tort liability.

A. Recent Violent Incidents at Event Venues

Incidents of violence or close calls at events highlight the need for standard security regulations to preserve artist and fan safety and, in cases where violence still occurs, to lessen injuries or casualties. For example, increased interactions between artists and their audiences stir questions regarding how to protect artists from individuals who wish to cause them harm rather than ask for an autograph. Meet-and-greets with fans have become a booming source of revenue for touring artists. They can bring in revenues often “50 percent to 100 percent higher than the face value of a ticket,” sometimes more when tied to sponsorship agreements, even for established artists; meet-and-greets can be particularly helpful for emerging artists trying to build or expand their fan bases.⁶ The experiences, such as photo opportunities or private performances, build upon the social media-fueled perception that artists should be easily accessible to fans.⁷ However, as meet and greets with fans become more frequent, more questions arise as

6. Ray Waddell, *Meet-and-Greets and Close Fan Interactions, a Financial Necessity to Many in the Industry, Face a 'Nation of Rage'*, BILLBOARD (June 15, 2016), <https://www.billboard.com/articles/business/7407998/meet-and-greets-nation-of-rage-financial-necessity> [<https://perma.cc/H83R-EVFS>].

7. *Id.*

to how promoters and venue owners can ensure that artists remain safe during up-close and personal interactions with their fans, particularly in small venues with small budgets and small staff numbers.⁸

On Friday, June 10, 2016, musician Christina Grimmie performed at the Plaza Live theater in Orlando, Florida in front of a crowd of approximately 300 concert attendees.⁹ After the concert, as she signed autographs during a meet-and-greet, a member of the crowd that she did not know shot her twice, killing her; he then shot and killed himself after Ms. Grimmie's brother tackled him.¹⁰ Police later discovered that her killer brought two pistols, two magazines, and a hunting knife into the venue. Although the venue searched arriving concert attendees with metal detectors or wands at most other events, only bag searches were in place on the night of Ms. Grimmie's murder.¹¹ Also, although signs posted outside of the venue stated that no weapons were allowed inside, the promoter, AEG, and the venue, which was owned by the Orlando Philharmonic Orchestra Plaza Foundation, did not have more intense screening measures in place the night of Ms. Grimmie's murder because "the concert was mostly attended by teenage girls."¹²

Ms. Grimmie's family filed a wrongful death lawsuit against both AEG and the Orlando Philharmonic Orchestra Plaza Foundation, alleging that they neglected to have adequate security onsite. Her family sought to recover medical and funeral expenses, damages, and Ms. Grimmie's estimated lifetime earnings.¹³ Although AEG filed a motion to dismiss, arguing that it did not promote Ms. Grimmie's entire tour and that the venue was instead responsible for the security issues, a circuit court judge denied the motion in April 2018 and noted that "AEG Live contractually shared the management and control of the concert, including security," with the venue owner, and that numerous facts, when taken as true, supported the "existence of a special relationship between AEG Live and [Ms. Grimmie]."¹⁴ The parties attempted mediation in September 2019. The court never ruled upon

8. See Waddell, *supra* note 3, at 1; see also Steve Knopper, 'No One Wants to Die on Tour.' *Inside the State of Concert Security*, ROLLING STONE (June 22, 2016, 3:48 PM), <https://www.rollingstone.com/music/music-news/no-one-wants-to-die-on-tour-inside-the-state-of-concert-security-226042/> [<https://perma.cc/KDF8-479W>].

9. Patrick Ryan, *In Wake of Orlando Shootings, Venue Safety Comes Into Question*, USA TODAY (June 12, 2016, 6:10 PM), <https://www.usatoday.com/story/life/music/2016/06/12/christina-grimmie-orlando-shootings/85788334/> [<https://perma.cc/D9H9-5HFB>].

10. Michael Williams, *Venue, Concert Promoter Ask Judge to Toss Lawsuit in Singer Christina Grimmie's Death*, ORLANDO SENTINEL (Mar. 20, 2018, 5:00 PM), <http://www.orlandosentinel.com/news/breaking-news/os-christina-grimmie-lawsuit-20180320-story.html> [<https://perma.cc/C2ST-XRWZ>].

11. *Id.*

12. *Id.*

13. Tina Amendola, *Judge Rejects AEG Lawsuit Dismissal in Christina Grimmie's Death*, POLLSTAR (Apr. 10, 2018, 9:35 AM), <https://www.pollstar.com/article/judge-rejects-aeg-lawsuit-dismissal-in-christina-grimmies-death-135024> [<https://perma.cc/2JVV-VUFC>].

14. *Id.*

the Orlando Philharmonic Orchestra Plaza Foundation's Motion for Final Summary Judgment because on December 3, 2019, Ms. Grimmie's family filed a Notice of Voluntary Dismissal with Prejudice as to both AEG Live and the Orlando Philharmonic Orchestra Plaza Foundation.¹⁵

The shooting drew comparisons to the murder of guitarist "Dimebag" Darrell Abbott, who was shot and killed onstage on December 8, 2004, in Columbus, Ohio at the Alrosa Villa Nightclub.¹⁶ The venue only had 250 fans in attendance, well below the venue's capacity of 600.¹⁷ The shooter, who stood outside while the opening bands played and had been told to leave the venue's parking lot by a venue employee earlier in the night, quickly entered the club through an unsecured side door. He then shot and killed Mr. Abbot, a member of the crowd, a band crew member, and a venue employee.¹⁸ Mr. Abbott's family filed a lawsuit against the Alrosa Villa Nightclub and alleged that the security team should have anticipated the shooter's dangerous behavior before he got inside the venue. The parties settled in 2007 on "undisclosed terms."¹⁹ Even before the murder of Ms. Grimmie and Mr. Abbott, music industry professionals worried that security, especially in small venues with low budgets, was too lax, allowing for venues to hire minimal security staff members or overenthusiastic fans to sneak backstage.²⁰ The deaths of both Ms. Grimmie and Mr. Abbott demonstrate the importance of venue security even at events with small numbers of attendees or mainly young fans in attendance.

As concerns grow regarding safety protocol for venues, those involved in the music festival industry also face concerns regarding violence and safety.²¹ The music festival industry is worth approximately three billion dollars worldwide.²² In 2014, 32 million people attended at least one music

15. Plaintiffs' Notice of Voluntary Dismissal with Prejudice, *Grimmie v. AEG Live SE*, No. 2016-CA-011056-O (Fla. Cir. Ct. Dec. 3, 2019).

16. Miriam Coleman, *Pantera Calls for Better Artist Protection After Christina Grimmie Shooting*, ROLLING STONE (June 12, 2016, 5:14 PM), <https://www.rollingstone.com/music/music-news/pantera-calls-for-better-artist-protection-after-christina-grimmie-shooting-104558/> [<https://perma.cc/C9AL-GBNC>]; Peter Wilkinson, *Behind the Murder of 'Dimebag' Darrell*, ROLLING STONE (Dec. 30, 2004, 5:30 PM), <https://www.rollingstone.com/music/music-news/behind-the-murder-of-dimebag-darrell-233541/> [<https://perma.cc/4PHC-LPK3>].

17. Wilkinson, *supra* note 16, at 5.

18. *Id.*

19. Steve Knopper, *Are Concert Venues Any Safer After Dimebag Darrell's Murder?*, ROLLING STONE (Dec. 8, 2014, 3:49 PM), <https://www.rollingstone.com/music/music-news/are-concert-venues-any-safer-after-dimebag-darrells-murder-76676/> [<https://perma.cc/UDG5-WV6T>].

20. *See id.*

21. *See* Luke O'Neil, *What Can Music Promoters Do About Concert and Festival Safety After the Las Vegas Massacre?*, ESQUIRE (Oct. 3, 2017), <https://www.esquire.com/entertainment/music/a12771114/music-festival-concert-safety-after-las-vegas/> [<https://perma.cc/WX5F-TDQ4>].

22. *Music Festivals: What's the World's Biggest?*, BBC (July 4, 2018), <https://www.bbc.com/news/world-44697302> [<https://perma.cc/748Q-H9AL>].

festival in the United States.²³ However, as festival attendance numbers grow, music festival promoters have become increasingly concerned about how to keep attendees and artists safe from security risks, particularly in festival sites within urban areas, surrounded by threats from “well beyond the traditional security perimeter of the event itself.”²⁴ In the unfortunate event of a violent incident that is unable to be prevented, unclear evacuation procedures and inadequately trained security staff can cause more harm to attendees as they attempt to leave an unsafe area or seek shelter.

On Sunday, October 1, 2017, over 20,000 people attended the third and final day of the Route 91 Harvest Festival, a country music festival located “on 15 open acres in the middle of the Las Vegas skyline.”²⁵ The festival, promoted by Live Nation, was in its fourth year, and the 2017 edition had not had any major issues on Friday and Saturday.²⁶ During Jason Aldean’s set, the closing act of the night, a man fired shots from the thirty-second floor of the adjacent Mandalay Bay Hotel down onto unsuspecting festival attendees.²⁷ It became the deadliest shooting in modern United States history, with fifty-nine people killed and 527 people injured.²⁸ Victims, their family members, and even a few security guards who had worked at the festival filed multiple lawsuits against Live Nation, the festival promoter, alleging that the festival lacked both “adequate exits” and “properly trained employees for when the crowd began trying to evacuate, resulting in additional injuries and exposure to the gunman’s fire.”²⁹

The aerial assault led to other open-air festivals held in cities to reassess their security standards, and security professionals began to call for “expanding the perimeter around so-called soft targets, and for increased

23. Joe Lynch, *Check Out These Surprising Stats About U.S. Music Festivals*, BILLBOARD (Apr. 22, 2015), <https://www.billboard.com/articles/columns/music-festivals/6539009/music-festival-statistics-graphic> [https://perma.cc/MN2J-89PA].

24. See O’Neil, *supra* note 21, at 6.

25. Avi Selk & Amy B. Wang, *Route 91 Harvest Festival: The Las Vegas ‘Sleepover’ That Ended in a Nightmare*, WASH. POST (Oct. 2, 2017), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/10/02/route-91-harvest-festival-the-las-vegas-sleep-over-that-ended-in-a-nightmare/> [https://perma.cc/8D8E-P7MP].

26. Gil Kaufman, *A Brief History of the Route 91 Harvest Festival*, BILLBOARD (Oct. 2, 2017), <https://www.billboard.com/articles/columns/country/7981988/route-91-harvest-festival-history> [https://perma.cc/V2X7-9AZN].

27. Daniel Kreps, *Las Vegas Shooting: At Least 59 Dead at Route 91 Music Festival*, ROLLING STONE (Oct. 2, 2017, 1:09 PM), <https://www.rollingstone.com/music/country/las-vegas-shooting-at-least-59-dead-at-route-91-music-festival-122293/> [https://perma.cc/YB6L-9479].

28. Karma Allen, Emily Shapiro & Julia Jacobo, *Las Vegas Shooting Death Toll Rises to 50, No Apparent Connection to International Terror*, ABC NEWS (Oct. 3, 2017, 3:19 AM), <https://abcnews.go.com/US/las-vegas-shooting-death-toll-rises-59-apparent/story?id=50223240> [https://perma.cc/XD8P-4A83].

29. Matt Pearce, *Mandalay Bay and Concert Promoter Sued by Hundreds of Las Vegas Massacre Survivors*, L.A. TIMES (Nov. 20, 2017), <http://www.latimes.com/nation/la-na-vegas-lawsuits-20171120-story.html> [https://perma.cc/Z3GT-8G5T].

coordination between venues and neighboring businesses.”³⁰ Event organizers and security professionals behind the Austin City Limits Festival, which took place with 75,000 attendees in Zilker Park in Austin, Texas, the weekend after the Route 91 Harvest Festival shooting, offered refunds to ticket buyers who were concerned about safety and had police officers visit condominiums bordering the festival site.³¹ Chris Robinette, the president of Prevent Advisors, a security advising company, stated that adjusting security to deal with potential aerial threats is “a dynamic process that requires promoters, venue managers, local authorities and other stakeholders to work together.”³²

Nearly a year after the attack on the Route 91 Harvest Festival, panic erupted on the other side of the country when attendees at the Global Citizen Festival in New York City, held in Central Park, heard a loud popping noise. Although police initially thought the source of the noise was a fallen fence barrier, they later determined that two attendees had gotten into a fight; as the crowd shifted away from the fight, concert attendees stepped on water bottles on the ground and at least one burst, which caused the loud popping noise.³³ There were 100 police officers covering the event who had studied shootings and conducted drills for such situations. The Assistant Chief of the NYPD implored attendees to “remain calm” after the sound rang out and police quickly determined that no shots had been fired. Police even brought Chris Martin, the frontman of the band Coldplay, onstage to implore the crowd to remain calm and notify them that no shots had been fired.³⁴ However, attendees began running towards exits, knocking over barriers as they ran while some individuals yelled, “Shooter!” Police officers in the crowd were reported to have told fleeing attendees to duck.³⁵

Although police calmed the crowd within minutes and no major injuries occurred, over thirty-seven people suffered minor injuries during the stampede. Attendees later complained about the lack of signage and surplus of barricades that made evacuation difficult, as well as the lack of clear communication about what was actually happening. Festival organizers eventually apologized for the confusing and dangerous situation and were left wondering what could have been done differently to better prepare for an

30. Reggie Ugwu & Joe Coscarelli, *There Is No Manual for This’: Security Experts Reckon with Aerial Assault*, N.Y. TIMES (Oct. 3, 2017), <https://www.nytimes.com/2017/10/03/arts/music/vegas-shooting-concert-security.html> [https://perma.cc/MH8S-A7ZK].

31. *Id.*

32. *Id.*

33. Sarah Mervosh, *Noise at Festival Was Not Gunfire*, N.Y. TIMES (Sept. 30, 2018), <https://www.nytimes.com/2018/09/29/nyregion/central-park-panic-global-citizen-festival.html> [https://perma.cc/KRE8-85J7]; Ashley Southall & Ali Winston, *Noise Wasn’t Gunfire, but Crowd’s Panic Was Real, and Dangerous*, N.Y. TIMES (Oct. 3, 2018), <https://www.nytimes.com/2018/10/03/nyregion/central-park-concert-stampede.html> [https://perma.cc/RX4V-8ZX4].

34. Southall & Winston, *supra* note 33, at 8.

35. *Id.*

evacuation and how to prevent a dangerous mob of fleeing attendees which, in this situation, was more dangerous to the crowd than the source of the panic-inducing noise.³⁶ At a time when instances of actual violence at venues and major events dominate the headlines, how can event organizers ensure the safety of evacuating attendees when the public is likely to assume the worst possible scenario in instances of apparent danger?

B. Tort Actions Against Venue Owners and Promoters

Violent incidents often leave courts to deal with the confusion of which party related to the event should actually be held liable. Many states have premise liability acts that limit a property owner's liability to occasions when a danger could have been reasonably foreseen.³⁷ Generally, under premises liability law, concert attendees are invitees to whom venue owners owe a duty of reasonable care.³⁸ However, a venue owner only has a duty to protect attendees from criminal assault or violence if such an intentional or criminal act by a third party was "reasonably foreseeable."³⁹ For example, in *Smit v. SXSW Holdings, Inc.*, the family of a 2014 SXSW festival attendee sued the festival organizers and the City of Austin in an action that included allegations of negligence and premises liability after an intoxicated driver knowingly sped through a closed city street while attempting to escape from police, striking and killing the attendee.⁴⁰ The Fifth Circuit Court of Appeals affirmed the trial court's dismissal of the complaint for failure to state a claim under state law.⁴¹ The court determined that the attendee's family made no sufficient allegation that the SXSW defendants maintained control of the city street where the incident took place. Although the city granted the SXSW defendants a permit to temporarily legally occupy the street, the permit was insufficient to give SXSW sufficient control to be liable for negligence and premises liability. In Texas, both of these causes of action require existence of "control of the premises," but the duty "does not extend beyond the limit

36. *Id.*

37. See Jennifer Medina and Jess Bidgood, *Uphill Battles in Court in Wake of Killing Spree*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/us/lawsuits-las-vegas-shooting.html> [<https://perma.cc/G3MP-FF2P>] ("In Colorado, the Premises Liability Act generally limits landowners from responsibility for dangers on their property that they could not reasonably have foreseen."); see also *Marrero v. City of New York*, 958 N.Y.S.2d 51, 52 (2013) (affirming the dismissal of a concert attendee's claim against a concert promoter after an unidentified attendee shoved the plaintiff. The court noted the unidentified party's causing the plaintiff to fall constituted "unforeseen conduct.").

38. 2 THOMAS D. SELZ ET AL., ENTERTAINMENT LAW § 10:36 (3d ed. 2018) (citing *Rotz v. City of New York*, 532 N.Y.S.2d 245, 248 (1988); *Thomas v. Illinois*, 55 Ill. Ct. Cl. 337 (2003)).

39. *Florman v. City of New York*, 293 A.D.2d 120, 124–25 (N.Y. App. Div. 2002); see generally Selz, *supra* note 38.

40. *Smit v. SXSW Holdings, Inc.*, 903 F.3d 522, 525–27 (5th Cir. 2018).

41. *Id.* at 525.

of the premises owner's control."⁴² The issuance of a temporary legal occupancy permit alone is insufficient.⁴³ The court then upheld the dismissal of the negligence and premises liability claim against the city, holding that the driver's conduct "was not reasonably foreseen under Texas law," noting that the owner of the premises only has a duty to prevent "third-party crime" if he or she "knows or has reason to know of an unreasonable and foreseeable risk of harm to the invitee" and that previous incidents involving intoxicated drivers in the area were not "sufficiently similar to the crime in question as to place the landowner on notice of the *specific danger*."⁴⁴

In *Maheshwari v. City of New York*, a 2004 case where several unidentified men assaulted an International Society for Krishna Consciousness pamphlet distributor in a parking lot on a music festival site, the Court of Appeals of New York noted that "[a] random criminal attack of this nature is not a predictable result of the gathering of a large group of people."⁴⁵ In contrast, in *Martens v. Board of Trustees of Southern Illinois University*, the Court of Claims of Illinois held that a venue owner failed to use "reasonable care" to protect a concert attendee from the dangerous actions of a third-party individual after an unidentified person set off a signal flare that struck and injured the attendee's face at an outdoor concert.⁴⁶ The court first asked whether the situation constituted a "known, dangerous condition," whether the venue had reason to believe that the attendee would fail to protect herself from the danger, and whether the venue owner used "reasonable care" to protect the attendee from the actions of the third party.⁴⁷ The court noted that once fireworks began to be set off by unidentified individuals in the crowd, there were "no public address requests that the fireworks cease, nor were there any signs or warnings in evidence anywhere prohibiting or referring in any way to fireworks."⁴⁸

The state of Illinois had legislation in place to prohibit the use of such fireworks and projectiles at the time of the attendee's injury; the court noted that such legislation "evidences a clear legislative expression that lighted, exploding, and flying objects are dangerous to the public."⁴⁹ The court also held that the presence of "between 200 and 250 ushers and regular security people on duty the night of the incident" gave the attendee "every reason to believe" that venue staff and security were in place "for her protection and would take necessary steps to eliminate any dangerous

42. *Id.* at 527–28 (citing *Dixon v. Hous. Raceway Park, Inc.*, 874 S.W.2d 760, 762 (Tex. Ct. App. 1994)).

43. *Smit*, 903 F.3d at 528.

44. *Id.* at 530–32 (citing *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 757 (Tex. 1998)).

45. *Maheshwari v. City of New York*, 810 N.E.2d 894, 896–98 (N.Y. 2004).

46. *Martens v. Bd. of Trs. of S. Ill. Univ.*, 35 Ill. Ct. Cl. 80, 82–85 (1981).

47. *Id.* at 84.

48. *Id.* at 81.

49. *Id.* at 84.

situation—especially a situation which was prohibited by State law.”⁵⁰ Finally, trial testimony established that the launching of fireworks or projectiles had been a common trend at concerts hosted at the venue in question, so the venue owner “should have been aware of the dangerous situation.” Therefore, the venue owner breached a duty to the attendee to protect against the “negligent or criminal” actions of a third party because the venue owner had knowledge of previous incidents involving fireworks within the venue and therefore had knowledge of the danger and a duty to anticipate it.⁵¹

A concert promoter can also potentially face tort liability after a third-party’s act of violence at an event. For example, in *Jones v. Live Nation Entertainment, Inc.*, the Appellate Court of Illinois reversed a lower court’s granting of summary judgment in favor of a concert promoter and remanded for consideration of whether the defendant, concert promoter Live Nation, owed the plaintiff, a concert attendee, a duty of care.⁵² The attendee suffered injuries after falling during a “crowd surge” as other attendees attempted to rush towards the stage after being encouraged to do so by the performers onstage, and the attendee alleged that the promoter “acted in a reckless and careless manner without regard for the safety of their audience when they knew or should have known that any movement by a majority of their audience at the same time in the same direction would create a hazard.”⁵³ The court noted that the trial court abused its discretion by granting summary judgment because an issue of material fact remained regarding whether Live Nation had a duty of care towards the injured attendee.⁵⁴ Although Live Nation and the venue owner had a rental agreement which split up obligations regarding security, crowd control, and other details of the concert, the court noted that the attendee was not a party to that agreement and, therefore, the agreement could not be used “to determine plaintiff’s rights.” The court also noted that the plaintiff “was invited by Live Nation to a Live Nation-promoted event, which featured two artists that Live Nation placed in performance” and therefore had a separate relationship with Live Nation while on premises leased or licensed to Live Nation.⁵⁵ In addition to live event attendees, promoters may also be liable to artists who are harmed during a violent incident.⁵⁶

As the number of violent incidents at live events continues to grow, it is likely to become increasingly difficult for event venue owners to argue

50. *Id.*

51. *Id.* at 84–85.

52. *Jones v. Live Nation Entm’t, Inc.*, 63 N.E.3d 959, 975 (Ill. App. Ct. 2016).

53. *Id.* at 963.

54. *Id.* at 970.

55. *Id.* at 972.

56. *See, e.g.*, Amendola *supra* note 13, at 4 (describing how a circuit court judge refused to dismiss a tort action filed by Ms. Grimmie’s family against the concert promoter AEG Live after a man shot and killed Ms. Grimmie after a concert).

the unforeseeable nature of such incidents.⁵⁷ Implementation of standardized venue security measures gives venue owners and promoters a clear sense of what steps they must take to properly secure an event and, in the unfortunate case of a security incident, would protect venue owners and promoters from liability if they followed the security measures. For example, in *Villa v. Paradise Theater Productions, Inc.*, a concert attendee sought damages from a concert promoter and venue owner after another individual assaulted the attendee at a concert.⁵⁸ After the promoter and venue owner presented evidence that they had security measures in place the night of the concert, including “the provision of security guards, metal detectors, handheld metal detecting wands, a police presence, and mandatory coat check,” the Supreme Court of the State of New York held that the defendants established prima facie that they had “reasonable” security measures in place and granted the defendants’ motions for summary judgment because the plaintiff failed to raise an issue of fact or establish that any “breach in the duty to provide security proximately caused plaintiff’s injury.”⁵⁹

II. EXAMPLES OF EXISTING VENUE SECURITY LEGISLATION AND MODEL CODES

Although many states already have legislation in place regarding crowd control, outdoor music festivals, and security staff requirements, venue security legislation often only applies to large venues or leaves decisions about sufficient standards to only a small number of officials. Such legislation is not expansive enough to actually keep performers or attendees safe. However, two model venue safety codes, *The Event Safety Guide* and *The Purple Guide to Health, Safety and Welfare at Music and Other Events* (the “Purple Guide”), give venue owners and promoters a helpful framework to use as a starting point when determining how to keep venues secure.

A. Existing Venue Security Legislation

Several states have legislation in place regarding crowd control in public spaces. Critical aspects of such legislation include crowd control plans, specified numbers of security personnel required to be onsite during events, security guard training requirements, and safety requirements specific to outdoor music festivals. Per New York statute, the operators of “places of public assembly,” which are deemed to be locations which can hold at least 5,000 people, must “establish a plan to be used for the purposes of crowd

57. See Brian D. Caplan, *Concert Venue and Promoter Liability for Violent Acts and Injuries at Concerts*, 29 NYSBA ENT. ARTS & SPORTS L.J. 63, 65 (2018).

58. *Villa v. Paradise Theater Prods., Inc.*, 85 A.D.3d 402, 402–03 (N.Y. App. Div. 2011).

59. *Id.*

control in the event of a riot.”⁶⁰ Crowd control plans must be filed with the state emergency management office and local police and fire departments thirty days before the operator hosts an event.⁶¹ An “operator” is “the primary tenant of a place of public assembly or the person or persons responsible for the operation and management of said place of public assembly. If no operator of said place of public assembly can be ascertained, then the owner shall be deemed the operator.”⁶² Ohio’s legislature enacted a statute that forbids the sale of non-numbered tickets that do not correspond to specific seats for “live entertainment” performances and concerts held in venues with more than 3,000 tickets offered to the public, unless the hosting venues meet two criteria: the venues must have at least eight entrances or turnstiles, and the entrances must be “opened, maintained, and properly staffed at least one hour prior to the scheduled start of the performance.”⁶³ However, the legislation does not provide any ascertainable standards to regulate security at those entrances, such as bag checks or pat-downs.

Venue security guards are often in the best position to prevent a violent incident or lessen the impact of such an incident by maintaining security checks at venue entrances, isolating threats, or instigating an orderly evacuation of attendees. However, there are no federal regulations regarding the training of security guards, and the majority of states do not require individuals to undertake even 40 hours of security training to work in a security guard position.⁶⁴ Although legislators introduced approximately 90 bills regarding security officer training in 2015, none of those bills advanced through the legislative process.⁶⁵

Many states have enacted statutes that provide some regulation of security at live events, but the statutes are often not as expansive or helpful as possible because they do not contain clear factors to consider when responsible parties decide how many security personnel an event requires. For example, event venues in North Dakota are required by statute to allow a sheriff or chief of the peace officer to decide how many, if any, “deputy sheriffs, special officers, or licensed private security officers” should be onsite during a live event, at the expense of the concert promoter.⁶⁶ However, while the North Dakota statute does not limit what constitutes a “music festival” by any set number of attendees, only “a musical performance by one or more groups held out of doors with the audience being present primarily for the purpose of listening to music,” the statute does limit what constitutes

60. N.Y. LAB LAW §§ 475(1)–(2) (McKinney 2018).

61. *Id.*

62. *Id.*

63. OHIO REV. CODE ANN. §§ 2917.40(B)–(D) (West 2019).

64. Jenni Bergal, *In Many States, Security Guards Get Scant Training, Oversight*, PEW (Nov. 10, 2015), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/10/in-many-states-security-guards-get-scant-training-oversight> [<https://perma.cc/4VFG-5KC7>].

65. *Id.*

66. N.D. CENT. CODE ANN. § 53-02-08 (West 2019).

a “public concert” to a “musical performance . . . held indoors . . . with the audience being present primarily for the purpose of listening to music and the location of such musical performance having a seating capacity of at least one thousand people.”⁶⁷

Many states have enacted legislation to regulate outdoor music festivals through the issuance of permits. However, these statutes often fail to specify security requirements needed for obtainment of a permit and often leave the decision of whether a promoter meets such requirements to the independent discretion of a designated local official. Many of the statutes do not even mention security requirements to prevent potential violent incidents. For example, Washington’s legislature enacted statutes specifically to regulate outdoor music festivals, but the legislative declaration specifies that the legislation is mainly designed to assist with “the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation [that] has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons,” rather than the prevention of violent incidents at outdoor music festivals.⁶⁸ In Delaware, the Superintendent of the State may only issue a permit to host an outdoor music festival contingent upon the promoter’s showing of evidence that he or she has provided “adequate security for the safety of the spectators and their property.”⁶⁹ However, the Delaware statute, like several other state statutes, specifies no guidelines to determine what measures actually constitute “adequate security.”⁷⁰

B. Existing Model Venue Safety Code Sources

There are not many organizations dedicated to model venue safety codes. However, in the wake of rising venue safety and violence concerns, organizations dedicated to standardizing venue safety standards have begun to emerge. The Event Safety Alliance (ESA) is a non-profit association made up of members of the live event industry. It was incorporated in February 2012 as a response to growing event safety concerns of event industry workers and modeled after event safety guidelines in the United Kingdom.⁷¹ The organization’s goal is to promote “‘life safety first’ throughout all phases of event production and execution” and to help event professionals and attendees be “[e]mpowered, [s]afe, and [a]ware of the reasonably foreseeable

67. §§ 53-02-01(1)–(3).

68. WASH. REV. CODE ANN. § 70.108.010 (West 2018).

69. DEL. CODE ANN. tit. 28, § 926(c)(1) (West 2018).

70. *Id.*; see also MD. CODE ANN., BUS. REG. § 17-1404 (West 2018).

71. Kevin M. Mitchell, *Event Safety Alliance Moves into Next Phase*, PROJECTION, LIGHTS & STAGING NEWS, Sept. 2014, at 48; *Ind. State Fair Stage Collapse Lessons Included in Worldwide Event Guidelines*, WNDU (Dec. 1, 2013, 3:23 PM), <https://www.wndu.com/home/headlines/Safety-guide-for-worldwide-outdoor-events-lauded-233995601.html> [https://perma.cc/972X-W4V8].

risks around them.”⁷² The ESA provides online entry-level event safety training programs and a “competency credential” program to provide safety certification for event workers.⁷³ Such certification is not yet required in the United States.⁷⁴ The ESA also provides live event and crowd safety symposiums to teach event professionals how to “understand the main risks of managing crowds,” “describe the phases of crowds and their psychology,” “conduct calculations for flow rates and density for people in crowded places,” “identify crowd behaviors in emergency situations and how to manage them,” and “manage safe pedestrian flows in crowded places during all phases of an event including emergencies.”⁷⁵

The ESA published its first *Event Safety Guide* in 2014 with the intention for it to be a “living document” to be “revise[d] and improve[d] as new approaches and technologies emerge.”⁷⁶ The *Event Safety Guide* contains event-specific considerations on various sizes of events, including small events, arena events, trade shows, and all night events, as well as suggested guidelines for emergency planning, communication, and venue and site design.⁷⁷ The *Event Safety Guide* recommends the creation of an event safety management plan during the early production phase of an event, which should include a plan for on-site first-aid and “arrangements with local hospitals,” a transportation management plan regarding vehicular routes inside the venue and public transportation arrangements and traffic management, and basic details of the event including venue layout details.⁷⁸

The *Event Safety Guide* also suggests the hiring of a safety coordinator for all events, with the exception of some small events where the event organizer “is competent to devise and apply protective measures themselves.”⁷⁹ However, it notes that it is equally important for small-event organizers “to carry out a risk assessment for the event, to identify which hazards are of greatest significance” and that the important factor to consider is not the size of an event, but “the proportionate level and extent of facilities and safe management systems required to ensure the health, safety, and welfare of patrons, performers, and event staff.”⁸⁰ The *Guide* recommends that for all types of events that require a safety coordinator, he or she should report directly to the event organizer to “eliminate the ‘filtering’ of

72. *Who We Are*, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/ourmission/> [<https://perma.cc/QU9S-3S7N>].

73. *See Event Safety Access Training*, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/event-safety-access-training-esat/> [<https://perma.cc/A4PU-972V>].

74. *See id.*

75. *See ESA’s Crowd Safety Symposium Comes to Rock Lititz This November*, EVENT SAFETY ALLIANCE, <https://www.eventsafetyalliance.org/crowd-safety-symposium-workshops/> [<https://perma.cc/4H38-RW24>].

76. EVENT SAFETY ALL., *THE EVENT SAFETY GUIDE 3* (Donald C. Cooper ed., 2014).

77. *Id.* at 3–8.

78. *Id.* at 15–16.

79. *Id.* at 21.

80. *Id.* at 302.

information by third parties . . . and that the coordinator assist with tasks including the:

- Preparation and monitoring of site safety rules;
- Liaison with contractors, event staff and the health and safety enforcement authority on site;
- Checking of safety method statements and risk assessments;
- Communication of safety information to contractors on site;
- Monitoring and coordinating safety performance; and
- Coordinating safety in response to a major incident.⁸¹

The *Guide* also states that no one should assign the safety coordinator “other competing roles which would divert his or her attention during the event.”⁸²

The *Event Safety Guide* provides guidelines for “major incident (emergency) planning.”⁸³ The *Guide* defines a “minor incident” as an undesired event, such as a low-level crime or minor injury that does not necessarily involve local authorities and is not “likely to escalate.”⁸⁴ A “major incident” is defined as an incident that is “likely to require the implementation of special or non-routine arrangements and resources from one or more emergency services” and, if it occurred, would involve local authorities in the treatment of a large amount of deaths and rescues, responding to a large influx of public and news inquiries, and the need for “combined resources” of at least two emergency services.⁸⁵ The *Guide* recommends that event organizers put together a flexible “major incident plan” that names key parties and identifies a pre-decided meeting spot for key decision makers in case of a major incident, evacuation paths and possible holding areas for attendees, ambulance loading areas, potential PA announcement scripts for emergency messages, and mechanisms and procedures to alert and warn attendees and the public of the incident.⁸⁶

The “major incident” section of the *Event Safety Guide* also discusses the importance of having a plan in place to understand and deal with issues that might impede evacuation paths, such as geographical features surrounding an outdoor event that might slow attendee movement, traffic backups, or transportation issues that strand attendees at the event site.⁸⁷ The *Guide* stresses the importance of having a major incident plan approved “at the highest level possible rather than at only the operational level since high level decision makers will usually have the most

81. *Id.* at 21.

82. *Id.*

83. *Id.* at 28.

84. *Id.* at 27–28.

85. *Id.* at 28.

86. *Id.* at 29–30.

87. *Id.*

responsibility in an emergency major incident situation.⁸⁸ However, it also notes the importance of communication of plans with guest services and security workers who work in shifts and are brought in to help quickly.⁸⁹ The *Guide* suggests having “individual, team or group presentations, written instructions and training videos” prepared to efficiently and effectively inform these workers of the plan.⁹⁰

The Event Safety Guide also discusses the importance of effective communication with attendees and the media in case of a major incident. Since patrons are likely to document incidents immediately through social media, and the media will therefore likely inquire about a major incident quickly after it occurs, the *Guide* suggests designating a chief press officer to communicate with the media and clearly plan a “media rendezvous point.”⁹¹ The *Guide* stresses the importance of both internal communication and communication to the public. Internal communication recommendations include a system to ensure that vendors, event staff, and guest members receive clear notification if the venue or event site requires evacuation.⁹²

The Health and Safety Executive (HSE) is an independent regulator in Great Britain that seeks to “prevent work-related death, injury and ill health.”⁹³ It initially published the *Purple Guide*, a non-compulsory guide for event organizers “to manage health and safety, particularly at large-scale music and similar events.”⁹⁴ The Events Industry Forum, an “informal organization” comprised of members who are “involved in representing the UK event industry or influencing the industry through training/education,” took over online publication of the *Purple Guide* in 2013 but still consults the HSE for “workplace health and safety” sections of the *Purple Guide*.⁹⁵ The Events Industry Forum hosts bi-annual meetings for event industry professionals to discuss topics affecting the industry such as policing and licensing.⁹⁶

Like the *Event Safety Guide*, the *Purple Guide* recommends having an event safety plan in place and notes that one must consider the “scale, type and scope of the event” to determine “what might go wrong and what

88. *Id.* at 31.

89. *Id.* at 31.

90. *Id.*

91. *Id.* at 81.

92. *Id.* at 76–83.

93. *The HSE Story*, HEALTH AND SAFETY EXEC., <http://www.hse.gov.uk/aboutus/hse-story.htm> [<https://perma.cc/3W2M-T27J>].

94. THE PURPLE GUIDE TO HEALTH, SAFETY AND WELFARE AT MUSIC AND OTHER EVENTS [hereinafter “PURPLE GUIDE”], <https://www.thepurpleguide.co.uk> [<https://perma.cc/B5Z2-B2R7>].

95. *Id.*; EVENTS INDUSTRY F., <http://www.eventsindustryforum.co.uk> [<https://perma.cc/H78Z-UGKP>].

96. *About the EIF*, EVENTS INDUS. F., <https://www.eventsindustryforum.co.uk/index.php/about-us> [<https://perma.cc/W5AR-S2DP>].

preventative measures are required.”⁹⁷ The *Purple Guide* states that five steps are necessary for risk assessment: identification of the hazards, deciding who might be harmed and how, evaluation of the risks and precautions, recording and implementation of such findings, and a review of the assessment with updates as necessary.⁹⁸ Event professionals are “only expected to tackle reasonably foreseeable hazards, taking account of reasonably foreseeable events and behavior.”⁹⁹ Any settled methods for preventing risks should be “periodically checked and tested.”¹⁰⁰ The *Purple Guide* also suggests a “clear understanding” of which individual is responsible for “safety matters” and how “specific safety duties will be allocated” for each event.¹⁰¹ It notes that signage should be large enough to view from a distance, attached to a fixture point, and should be “pictorial in content” whenever possible to assist event attendees that do not speak English.¹⁰² The *Purple Guide* notes that the “timely use of social media and the involvement of appropriate social media professionals should be included in public information provision whenever possible” to “ensure that messages are coordinated by the event rather than members of the public.”¹⁰³

III. FIRE SAFETY LEGISLATION AND REGULATIONS: A RESPONSE TO TRAGEDY

One can draw parallels between venue security issues and fire safety issues in venues, which have gradually inspired changes in how venues are managed and monitored for fire safety across the United States. One deadly incident, the Station nightclub fire, instigated legislative action in Rhode Island, the state in which the fire occurred, and Massachusetts, a state with a large number of citizens affected by the incident, to prevent recurring fire tragedies.¹⁰⁴ The state legislatures’ responses to fire tragedies serve as a model for how all states can proactively respond to the danger of violent incidents at event venues and prevent unnecessary casualties and potential

97. *Planning, Management & Risk Assessments*, PURPLE GUIDE, <https://www.thepurpleguide.co.uk/index.php/the-purple-guide/104-2-planning-management-risk-assessments> [https://perma.cc/XRM8-F6KT] (on file with author; available through subscription).

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Venue & Site Design*, PURPLE GUIDE, <https://www.thepurpleguide.co.uk/index.php/the-purple-guide/103-3-venue-site-design?showall=&start=1> [https://perma.cc/Q4P4-D6A5] (on file with author; available through subscription).

103. *Id.*; *Communication*, PURPLE GUIDE <https://www.thepurpleguide.co.uk/index.php/the-purple-guide/100-6-communication?showall=&start=0> [https://perma.cc/SA6R-HYUS] (on file with author; available through subscription).

104. See Robert F. Duval, *NFPA Case Study: Nightclub Fires*, NAT’L FIRE PROTECTION ASS’N 1, 29–34 (2006), https://www.nfpa.org/~media/files/news-and-research/resources/fire-investigations/case_study_nightclub_fires.pdf?la=en [https://perma.cc/72TX-LVAN] (outlining Rhode Island’s legislative response to the Station nightclub fire).

litigation as venue owners, concert promoters, and the general public become more aware of the predictability of such incidents.¹⁰⁵

A. The Station Nightclub Fire

On February 20, 2003, over 450 fans packed the Station, a nightclub with a capacity of 300, to attend a concert by the rock band Great White.¹⁰⁶ During the show, the band's tour manager lit pyrotechnics behind the band as a part of the stage act. Sparks from the pyrotechnics caught fire, which spread due to polyurethane foam lining the ceiling and walls of the nightclub.¹⁰⁷ Fire consumed the building within three minutes, killing 100 concert attendees and injuring over 200 more.¹⁰⁸ Jeffrey and Michael Derderian, the owners of the Station nightclub, maintained that they believed the polyurethane foam that lined the ceiling and walls for sound insulation was flame-resistant though it increased the flames.¹⁰⁹ The polyurethane foam violated Rhode Island's fire code at the time of the incident, but the club had never received a citation for the foam even though there had been several fire code inspections before the fire. In addition, the West Warwick fire inspector had recently doubled the club's legal capacity before the fire.¹¹⁰

The Station had three public exits, including two double doors that served as the main exits and two separate, three-foot wide doors that opened onto stairways outside of the building. However, the two double doors that served as the main exit were only accessible through one three-foot door.¹¹¹ Individuals typically take the same path to exit a building as they use to enter the building.¹¹² As two-thirds of concert attendees flooded towards the main exit of the Station, people began to fall, and the main exit became blocked by fallen patrons. Several individuals were crushed during the evacuation.¹¹³

105. See Caplan, *supra* note 57, at 65 (noting that "it will become more difficult for venues and promoters to disclaim liability by maintaining that such senseless acts of violence are not foreseeable").

106. See Max Winograd, *Station Nightclub Owners Sentenced for Their Role in Fatal 2003 Fire*, BROWN DAILY HERALD (Dec. 8, 2006), <http://www.browndailyherald.com/2006/12/08/station-nightclub-owners-sentenced-for-their-role-in-fatal-2003-fire/> [<https://perma.cc/Y65D-6HDV>].

107. *Id.*

108. Tracy Breton, *Station Owners Silent as Fire's 10th Anniversary Nears*, PROVIDENCE J. (Feb. 12, 2013, 10:22 AM), <http://www.providencejournal.com/topics/special-reports/station-fire/content/20130212-station-owners-silent-as-anniversary-nears.ece> [<https://perma.cc/3TT8-XC43>].

109. *Id.*

110. See also Winograd, *supra* note 106.

111. Jim Tidwell, *The Station Nightclub Fire: Revisiting the Lessons*, FIRE ENGINEERING (Jan. 1, 2012), <https://www.fireengineering.com/articles/print/volume-165/issue-1/features/station-nightclub-fire-revisiting-lessons-full.html> [<https://perma.cc/USE3-GQZ4>].

112. JOHN BARYLICK, KILLER SHOW, THE STATION NIGHTCLUB FIRE: AMERICA'S DEADLIEST ROCK CONCERT 103 (2012).

113. Tidwell, *supra* note 111.

Although Rhode Island's building code required sprinklers in all "places of public assembly occupied by more than three hundred people" in 2003, there was no sprinkler system installed in the Station nightclub due to a grandfather clause in the legislation, which allowed for the exemption of buildings constructed before the legislation became effective. In addition, the Station's employees had received no training on how to respond in the event of an emergency in the building.¹¹⁴ Witnesses even reported that venue security personnel turned away concert-goers who attempted to leave the building through the band door exit during the first minute of the fire because the exit was "for the band only."¹¹⁵

B. Model Code and Legislative Responses to the Station Nightclub Fire

In the aftermath of the Station nightclub tragedy, avoidable issues within the existing Rhode Island fire code became apparent. The fire motivated both nonprofit fire safety organizations and state legislatures to update model fire codes and legislation to prevent future venue fires. The National Fire Protection Association (NFPA) is a nonprofit organization dedicated to "eliminating death, injury, property and economic loss due to fire, electrical and related hazards."¹¹⁶ The organization creates codes and standards to lower risks of fire by "establishing criteria for building, processing, design, service, and installation around the world."¹¹⁷ The International Code Council (ICC) is a nonprofit organization dedicated to developing "model codes and standards used worldwide to construct safe, sustainable, affordable, and resilient structures."¹¹⁸ States have adopted provisions from the model codes of both organizations into their own fire legislation.

Both organizations used the Station nightclub fire as a catalyst to update their model fire codes. For example, before the Station nightclub fire, both organizations required automatic sprinkler systems to be in place for buildings with capacities over 300. However, neither code required buildings that existed before the provision to install the sprinklers. The Station nightclub fire demonstrated that such "grandfathering" provisions could have deadly consequences. The NFPA updated its code to require automatic sprinkler systems in all new nightclubs, bars with live entertainment, and places of assembly. Buildings that existed before the update were required to

114. BARYLICK, *supra* note 112, at 67.

115. *Id.* at 240.

116. *NFPA Overview*, NAT'L FIRE PROTECTION ASS'N, <https://www.nfpa.org/About-NFPA/NFPA-overview> [<https://perma.cc/25SJ-7QH3>].

117. *Id.*

118. *About the International Code Council*, INT'L CODE COUNCIL, <https://www.iccsafe.org/about-icc/overview/about-international-code-council/> [<https://perma.cc/CN5U-9Y46>].

install automatic sprinkler systems if the building capacity was above 100.¹¹⁹ The ICC also updated its code to require automatic sprinkler systems in all venues with capacities of one hundred or with assembly areas of 5,000 square feet or larger.¹²⁰

In Rhode Island, the state in which the fire took place, the legislature passed the Comprehensive Fire Safety Act, which was based upon findings from the “Special Legislative Commission to Study All Aspects of Law & Regulation Concerning Pyrotechnic Displays and Fire Safety,” a seventeen-person commission comprised of “legislators, fire service leaders (both labor and management), and public-sector representatives,” including “members of the state legislature, representatives of the state fire service, the State Fire Marshal, the Lt. Governor, the Adjutant General of the State, the Director of the Department of Public Health, the Executive Director of the State Fire Code Board of Appeal and Review, and representatives from the hospitality and real estate industries.”¹²¹

The commission made multiple recommendations, such as mandatory sprinklers in clubs with capacities of 150 or greater; prohibition of fireworks in nightclubs and similar places along with strict regulation of fireworks in larger venues; requiring municipally connected fire alarms in “concentrated use places of assembly that are defined as ‘special amusement buildings’ . . . with occupancies of 150 or greater . . . by July 1, 2004”; giving power of entry for purposes of inspections to fire marshals “similar to those of other state and local inspectors”; making it a felony to violate requirements for “commercial and public use or display of commercial pyrotechnics”; and the allocation of “greater enforcement powers to fire marshals.”¹²² The Commission heard testimony from victims and families of deceased victims, fire and life safety experts, and other entertainment and hospitality industry members.¹²³ The Commission recommended requiring the Fire Marshal to “make public the repeat and/or uncorrected fire safety code violations of all places of assembly that are special amusement buildings and to provide this information on a website” and to authorize a penalty of up to \$5,000 for using “decorative or acoustical materials” that were not certified “consistent with NFPA requirements or such other requirements as may be established by the Fire Safety Code Board of Appeal and Review.”¹²⁴

The Comprehensive Fire Safety Act also provided for “the adoption and implementation of an up-to-date comprehensive system of codes for fire

119. Duval, *supra* note 104, at 1.

120. Tidwell, *supra* note 111.

121. 23 R.I. GEN. LAWS ANN. §§ 23-28.01-1 to -6 (West 2018); Duval, *supra* note 104, at 29.

122. Steve Blackistone, *R.I. Adopts Fire Safety Law in Response to Nightclub Fire*, FIREHOUSE (Jan. 31, 2004), <https://www.firehouse.com/leadership/article/10528908/ri-adopts-fire-safety-law-in-response-to-nightclub-fire> [<https://perma.cc/6WUB-7HZ2>].

123. Duval, *supra* note 104, at 29.

124. *Id.* at 30.

safety.”¹²⁵ It called for the fire marshal, along with a fire safety code board of appeal and review, the building code commission, and several other departments, to “prepare and approve” a “comprehensive plan setting forth goals and implementation measures for improving fire safety” that would be updated every five years.¹²⁶ The legislation also called for the adoption of the National Fire Protection Association Uniform Fire Code and Life Safety Code in the State of Rhode Island and repealed “grandfather exemptions” for buildings which existed before the Act, the same exemptions which had allowed the Station nightclub to operate without the installation of a sprinkler system.¹²⁷ However, the legislation did allow for “reasonable notice” of fire safety code violations and allowed for the establishment of a “timetable for compliance.”¹²⁸

The state of Massachusetts also had ties to the Station nightclub fire; one-third of the victims of the fire were citizens of the state.¹²⁹ The state created a Task Force on Fire and Building Safety in April 2003, less than two months after the Station nightclub fire, which included the Secretary of Public Safety; the state Fire Marshal; state commissioners; fire chiefs from around the state; fire protection engineers and building officials; family members of fire victims; and insurance, hospitality, and entertainment industry representatives.¹³⁰ In 2004, the governor of Massachusetts signed a bill requiring sprinklers in every “building or structure . . . of public assembly, with a capacity of 100 persons or more, that is designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes” into law.¹³¹ Approximately nine years after the signing of the bill, the State Fire Marshal estimated that over 800 venues in Massachusetts had been retrofitted for sprinklers as required by the bill.¹³²

The state legislature vested the power to enact fire regulations in a Board of Fire Prevention. In addition, the Board was required to hold “public hearings on the first Thursday in May and October in each year, and at such other times as it may determine, on petitions for changes in the rules and regulations formulated by it.”¹³³ If the Board believed it appropriate to make changes to the fire regulations after the hearings, it was to “appoint a day for a further hearing . . . [and] give notice thereof and of the changes proposed

125. § 23-28.01-3.

126. § 23-28.01-5; BARYLICK, *supra* note 112, at 67.

127. § 23-28.01-5.

128. § 23-28.1-7.

129. Duval, *supra* note 104, at 31.

130. *Id.*

131. MASS. GEN. LAWS ANN. 148 § 26G1/2 (West 2004); *see also Deadliest U.S. Nightclub Fire Influences Safety Codes, Burn Care*, CBS NEWS (Nov. 28, 2017, 10:43 AM), <https://www.cbsnews.com/news/cocoanut-grove-boston-nightclub-fire-safety-codes-burn-care/> [<https://perma.cc/7W3S-ZVMY>].

132. Patrick Johnson, *10 Years After the Station Nightclub Fire in R.I., Massachusetts Touts Safety Measures*, MASSLIVE (Feb. 19, 2013), https://www.masslive.com/news/index.ssf/2013/02/10_years_after_rhode_islands_s.html [<https://perma.cc/V75K-RX5N>].

133. MASS. GEN. LAWS ANN. 148 § 10 (West 2018).

by advertising in such newspapers . . . or professional publications . . . at least ten days before said hearing.”¹³⁴ The Board of Fire Prevention enacted amendments to the Massachusetts Comprehensive Fire Safety Code, including the requirements that venues that fail a yearly fire safety inspection are not allowed to renew their liquor licenses¹³⁵ and that “[a]ll nightclubs, dance halls, discotheques and bars with occupancies above 100 people must have certified crowd managers Every facility must have one crowd manager for every 250 occupants when the facility is open.”¹³⁶ A crowd manager is to be certified every three years by completing an online course; his or her duties include responsibilities to:

- Maintain clear paths of egress;
- Assure that the facility does not exceed its occupant load limit;
- Initiate a fire alarm if necessary and direct occupants to exits;
- Assure that audible announcements are made before each program or performance notifying occupants of emergency exit locations;
- Complete the Fire and Building Safety Checklist daily, before the facility opens; [and]
- Keep completed checklists on file and available to fire and building code officials for at least one year.

The sources of the Station nightclub fire, the polyurethane foam used to line the walls and ceiling of the club and the pyrotechnics set off during the show, were not permitted by either the NFPA, ICC, or the Rhode Island state fire codes at the time of the fire.¹³⁷ The foam hung on the walls and ceiling for two years throughout at least two fire code inspections, but it was never cited as a violation.¹³⁸ The devastation caused by the lack of code enforcement highlights the importance of sustainable enforcement strategies to ensure that code provisions are actually enforced.

As the potential for violence within event venues and security procedural concerns become more apparent, it is helpful to examine how past fire-related legislation can be used as a model for event venue security legislation. The tragedy of the Station nightclub fire inspired legislation and regulations regarding fire safety within event venues and saved countless lives. Similar legislation and regulation regarding event venue security standards could help to prevent future instances of violence within event venues, help to save lives in violent situations, and give venue owners and

134. *Id.*

135. Johnson, *supra* note 132.

136. *See Crowd Managers*, MASS.GOV, <https://www.mass.gov/service-details/crowd-managers> [<https://perma.cc/LQ25-78PT>].

137. Tidwell, *supra* note 111, at 31.

138. BARYLICK, *supra* note 112, at 103.

promoters clear standards to follow to prevent tort liability due to violent actions by third parties.

IV. PROPOSED MODEL VENUE SECURITY LEGISLATION

The actions of the Rhode Island and Massachusetts legislatures after the Station nightclub fire showed that, even if there is already legislation in place to lessen the dangers of injuries or casualties in event venues, such legislation can be expanded upon or improved if shown to be inadequate to prevent such dangers. After recent incidents of gun violence against fans and artists,¹³⁹ disorderly and injurious evacuations, and public panic over perceived threats,¹⁴⁰ such violent events will likely become more foreseeable, even at small venues, and leave venue owners and promoters open to tort liability.¹⁴¹ What follows is model legislation to address growing concerns over violence in event venues, influenced by legislative responses to the Station nightclub fire, existing venue safety state legislation, and model venue safety codes.

Model Venue Safety Act

(A) Definitions:

(1) In this section, “live entertainment” means a live musical or comedic performance by one or more performers held indoors and open to the public, with the audience being present primarily for the purpose of viewing performances,¹⁴² with a capacity of 100 or greater.

(2) In this section, “outdoor music festival” means a live musical or comedic performance by one or more individuals or groups held out of doors and not in a permanent structure, with the audience being present primarily for the purpose of viewing performances, with a capacity of 100 or greater.¹⁴³

139. See Williams, *supra* note 10; see also Kreps, *supra* note 27.

140. See Mervosh, *supra* note 33; see also Kreps, *supra* note 27.

141. See, e.g., Caplan, *supra* note 57, at 65 (noting that “the issues of venue and promoter liability will likely become the focus of increased judicial scrutiny. As violent acts are perpetrated, it will become more difficult for venues and promoters to disclaim liability by maintaining that such senseless acts of violence are not foreseeable.”).

142. See N.D. CENT. CODE ANN. § 53-02-01 (West 2019); see also OHIO REV. CODE ANN. § 2917.40 (West 2019).

143. See PURPLE GUIDE, *supra* note 97, at 6; see also DEL. CODE ANN. tit. 28, § 925(1) (West 2019).

(B) The purpose of this section is to provide for the creation of a Board of Live Entertainment and Outdoor Music Festival Security (“The Board”). The powers necessary to implement the provisions of this act shall be vested in the state Department of Safety and Homeland Security.¹⁴⁴

(1) The Board shall consist of fourteen members appointed by the governor for terms of six years each.¹⁴⁵

(a) Members of the board shall include an attorney, an insurance broker, a production manager, a current or former state fire marshal, a current or former employee of the International Alliance of Theatrical Stage Employees, an administrative-level private security company employee, an employee of the National Weather Service, and three chiefs of police: one from a community with a population of less than twenty-five thousand, one from a community with a population of more than twenty-five thousand but less than fifty thousand, and one from a community with a population over fifty thousand.

(b) The remaining four members of the Board shall be appointed at the discretion of the governor.¹⁴⁶

(2) The Board shall, by one year from the date of the statute’s enactment, prepare and approve regulations setting forth goals and implementation measures for improving live entertainment and outdoor music festival security standards within the state.¹⁴⁷ The comprehensive plan must include, but is not limited to:

(a) Requirements for live entertainment and outdoor music festival promoters to create an event safety management plan. Outdoor music festival

144. The official or office responsible for implementation of this statute will vary from state to state depending upon administrative structure. *Cf.* MASS. GEN. LAWS ANN. ch. 22D § 4 (West 2019).

145. *Cf.* 22D § 4 (outlining how members of the Board of Fire Prevention shall be appointed and how long they may serve on the Board).

146. This will allow for flexibility as security needs change and more areas where expertise is needed become apparent.

147. *Cf.* 23 R.I. GEN. LAWS ANN. § 23-28.01-5(b) (West 2019) (setting a deadline for enactment of a comprehensive fire safety plan).

promoters shall submit such a plan to the local chief of police at least two weeks prior to the event. Live entertainment event venues shall submit such a plan to the local chief of police annually by the second Friday in January. Such plan shall include but not be limited to: identification of potential security hazards, evaluation of such risks and precautions the promoter or venue owner will take to prevent them from occurring, identification of key venue staff members including those listed in sections (d)(i)-(ii), a meeting spot for key staff members to meet in case of a major incident, potential announcement scripts for emergency messages, identification of ambulance loading areas, and potential holding areas for attendees;¹⁴⁸

(b) Requirements regarding the number of security personnel required at a live entertainment venue or outdoor music festival based upon the number of expected event attendees;

(c) Standard guidelines for bag checks and pat-downs for live entertainment events and outdoor music festivals; factors to be considered include, but are not limited to, the number of expected attendees and the number of entrances to the live entertainment or outdoor music festival venue which are open to event attendees;

(d) Requirements for event staff members who must be designated and present at live entertainment events and outdoor music festivals at any time that the spaces are open to the public or ticketholders. Required staff members shall include, but are not limited to:

(i) A Security Manager who shall oversee all security staff present at a live entertainment event or outdoor music festival, ensure that security staff perform any required bag checks or pat-downs as required by the Board, and make the decision and communicate with the Crowd

148. See PURPLE GUIDE, *supra* note 97, at 2 (suggesting the need for a clear understanding of allocation of safety-related job duties).

Manager and performers if a performance must end due to an emergency situation.¹⁴⁹

(ii) A Crowd Manager who shall maintain clear paths of egress, ensure that each exit has clear signage in place to identify it as such, ensure that the facility does not exceed its occupancy limit, and communicate with attendees if the performance must end or if the live entertainment venue or the outdoor music festival must evacuate due to an emergency. The Board shall create a Crowd Security Manager certification program.¹⁵⁰

(3) The Board shall hold public hearings on the first Fridays in January and June of each year, and at such other times as it may determine, regarding suggested changes in its rules and regulations. If the Board wishes to make changes to the regulations after such public hearings, it must give notice in entertainment industry professional publications at least ten days before a further hearing adopting such changes.¹⁵¹

(4) The Board shall review and amend the plan as necessary every five years. The plan may be reviewed and amended periodically as needed.¹⁵²

(C) This section does not apply to privately held, non-ticketed events or church services.¹⁵³

(D) A live entertainment or outdoor music festival venue owner's failure to comply with this Act may result in the revocation of the venue's liquor license and misdemeanor charges.¹⁵⁴

149. *Id.*

150. *See Crowd Managers, supra* note 136.

151. *Cf.* MASS. GEN. LAWS ANN. ch. 148 § 10 (West 2018) (designating dates for public hearings regarding proposed changes to fire safety regulations).

152. *Cf.* 23 R.I. GEN. LAWS ANN. § 23-28.01-5(b) (West 2018) (requiring the review and possible amendment of Rhode Island's comprehensive fire safety plan).

153. Specific exceptions may vary based upon common types of events in each state. *Cf.* OHIO REV. CODE ANN. § 2917.40(G)(2) (West 2019) (similar language noting exceptions to statute regarding seating and crowd control requirements).

154. Enforcement provisions are vital to ensure that potentially lifesaving provisions are followed. *See, e.g.,* Tidwell, *supra* note 111 (noting that, even though statutory law prohibited

V. REASONING BEHIND THE MODEL VENUE SECURITY LEGISLATION

Updated fire code legislation in Rhode Island and Massachusetts after the Station nightclub tragedy can serve as a model for how states may adjust or enact legislation to deal with potential violence at live event and outdoor music festival venues as such events become more foreseeable. Such legislation can help to ensure that individuals with expertise in live events and dealing with such threats have a say in new live event security regulations.

A. Composition of the Board

Updated fire code legislation in Rhode Island and Massachusetts after the Station nightclub tragedy and the model rules and membership composition of the ESA and the Events Industry Forum demonstrate the effectiveness of obtaining input from individuals with wide varieties of work experience to serve as Board members and implement the provisions of the Act. The Massachusetts legislature's vesting of the power to enact fire regulations in a Board of Fire Prevention ensures that individuals with strong knowledge of fire safety are the designated individuals to make decisions on the best fire safety practices because the Board's members must consist of "the state fire marshal . . . the commissioner of the Boston fire department . . . and 14 members to be appointed by the governor, for terms of six years each."¹⁵⁵ The fourteen appointed members are to include representatives who are the heads of fire departments from various communities, a member of the Massachusetts Fire Prevention Association, a fire protection engineer, a chemical engineer, a mechanical engineer, an electrical engineer, a chemist with fire testing experience, a representative of the public, a graduate chemist with fire testing experience, an inspector of wires with an electrician's license, a blasting industry representative, a building inspector, and an electrical contractor.¹⁵⁶

Similarly, the Board of Directors, Advisory Council, and staff members of the ESA, the publisher of the *Event Safety Guide*, consist of members with diverse career and expertise backgrounds, including an attorney,¹⁵⁷ insurance broker,¹⁵⁸ production manager,¹⁵⁹ event planner and

the use of the polyurethane foam on the walls and ceiling of the Station nightclub, the venue passed at least two fire code inspections with the foam in place).

155. MASS. GEN. LAWS ANN. ch. 22D § 4 (West 2019).

156. *Id.*

157. *Steve A. Adelman*, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/stevenadelman> [<https://perma.cc/B3HC-A4DC>].

158. *Scott Carroll*, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/scott-carroll> [<https://perma.cc/5C8K-652H>].

159. *Charlie Hernandez Sr.*, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/charlie-hernandez-sr> [<https://perma.cc/Z3CJ-GCV9>].

project manager,¹⁶⁰ a former state fire marshal,¹⁶¹ employees of the International Alliance of Theatrical Stage Employees (IATSE), the National Weather Service, and other live event industry professionals.¹⁶² The ESA describes its advisory council members as having “diverse backgrounds, experiences, and points of view,” but a shared, united focus “to help the Event Safety Alliance better serve the needs of everyone working in or attending live events” while “setting the strategic vision for the organization, guiding . . . development of critical projects, and helping procure human and financial resources.”¹⁶³ Such diverse backgrounds give the ESA team a broad range of expertise to consult when setting policies and editing the *Event Safety Guide*.

Although the *Event Safety Guide* does not yet focus on specific suggestions for security screenings, the organizational structure provides another model¹⁶⁴ for how individuals from varied backgrounds can use their expertise to address potential safety protocols from multiple perspectives and keep such protocols current as new safety threats become foreseeable. Similarly, the Events Industry Forum also consists of members involved in various aspects of the event industry in the United Kingdom who contribute to the model standards and policies expressed in the *Purple Guide*.¹⁶⁵

Like the Massachusetts Board of Fire Prevention and the ESA, section (B)(1) of the Model Venue Safety Act calls for individuals with diverse work experience and expertise within live event production, security, and other surrounding industries to form the Board of Live Entertainment and Outdoor Music Festival Security to address and anticipate safety issues from a broad variety of perspectives.

B. Public Hearings, Review, and Amendment

Section (B)(3) of the Model Venue Safety Act requires bi-annual public hearings for suggested changes to and comments regarding the Board’s regulations. Section (B)(4) requires the Board to review and, if needed, amend the regulations every five years. After the tragic Station nightclub fire, state legislatures reacted by updating their fire safety legislation to address shortcomings in prior legislation and included provisions to require regular review and updates to legislation and regulations. The Rhode Island Comprehensive Fire Safety Act must be

160. Steve Lemon, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/steve-lemon> [https://perma.cc/9MA6-X7WE].

161. Donald C. Cooper, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/donald-cooper> [https://perma.cc/2NVE-H4S8].

162. *Our Leadership*, EVENT SAFETY ALL., <https://www.eventsafetyalliance.org/our-leadership/> [https://perma.cc/F2YT-VTHE].

163. *Id.*

164. *See also* MASS. GEN. LAWS ANN. ch. 148 § 10 (West 2018).

165. PURPLE GUIDE, *supra* note 94; EVENTS INDUSTRY F., *supra* note 95.

reviewed and updated every five years¹⁶⁶ and the Massachusetts Board of Fire Prevention is required to hold bi-annual public hearings regarding petitions for changes in its regulations.¹⁶⁷ Similarly, event professionals frequently reflect upon more expansive or effective security measures after a violent incident at a venue or festival.¹⁶⁸ While the Model Venue Safety Act gives the Board the authority to review and amend its regulations at any time as needed, the required reviews every five years help to ensure that the regulations are proactive and not merely reactionary. Like the *Event Safety Guide*, which the ESA stated was intended to be a “living document” to be updated as “new approaches and technologies emerge” in event safety,¹⁶⁹ the Board’s regulations should regularly evolve to address new security measures and potential dangers.

C. Capacity

The Model Venue Safety Act applies to all venues and outdoor music festivals open to the public with capacities of 100 or greater; it does not call for any grandfather exemptions for pre-existing venues. Requirements for venues to have high capacities before statutory regulation of security lessen the effectiveness of such legislative efforts. Recent violent incidents at live events demonstrate that even small-scale events are not immune from tragedy. The Alrosa Villa Nightclub, where a concertgoer shot and killed “Dimebag” Darrell Abbott onstage, had a capacity of 600; there were only 250 individuals in attendance at the time of the shooting.¹⁷⁰ The Plaza Live, where a concert attendee shot and killed musician Christina Grimmie during a meet and greet, has a general admission standing room capacity of 1,250, but the reserved seating capacity is 903; there were only 300 individuals in the crowd the night of Ms. Grimmie’s shooting.¹⁷¹

Both venues accommodated capacities below the numbers set by many state statutes to require security personnel onsite or crowd control

166. 23 R.I. GEN. LAWS ANN. § 23-28.01-5(b) (West 2019).

167. MASS. GEN. LAWS ANN. ch. 148 § 10 (West 2018).

168. For example, the aerial attack during the Route 91 Harvest Festival caused event and security industry professionals to consider more expansive avenues of outdoor music festival security. See, e.g., Dave Brooks, *Las Vegas Shooting: Security Experts Explore New Safety Solutions*, BILLBOARD (Oct. 5, 2017), <https://www.billboard.com/articles/news/magazine-feature/7989203/las-vegas-shooting-security-experts-new-safety-precautions> [<https://perma.cc/43P2-FJLN>] (discussing how event professionals need “out-of-the-box ideas” to prevent situations like the aerial assault from happening again, including the use of hydraulically raised observation towers with SWAT team sharpshooters or “safety zone” barriers for attendees to hide behind in case of attacks).

169. EVENT SAFETY ALL., *supra* note 76, at 3.

170. Wilkinson, *supra* note 16.

171. Ryan, *supra* note 9; *Venue*, THE PLAZA LIVE, <https://www.plazaliveorlando.org/venue-info> [<https://perma.cc/8LGV-K8VM>].

plans.¹⁷² In addition, statutory security requirements frequently leave the amount of security personnel needed at an event, or the decision of whether a concert promoter has an adequate security plan in place, to the discretion of authorized local officials without any statutory definition or description of what measures constitute adequate security.¹⁷³ Florida, the state where Ms. Grimmie's murder occurred, does not even have a statute in place requiring security guards at live events of any size.¹⁷⁴

Such statutory omissions are comparable to Rhode Island's building code before the Station nightclub fire that required sprinklers in "places of public assembly occupied by more than three hundred people," yet contained a grandfather clause allowing for the exemption of buildings constructed before the legislation became effective, so that there was no sprinkler system in the Station nightclub when fire consumed the building.¹⁷⁵ The grandfather exemptions were repealed after the tragedy.¹⁷⁶ Similarly, a year after the Station nightclub tragedy, the Massachusetts legislature passed a bill requiring sprinklers in every "building or structure . . . of public assembly, with a capacity of 100 persons or more, that is designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes . . ." ¹⁷⁷ Recent violent incidents at venues and outdoor music festivals of varying sizes demonstrate the need for safety legislation and regulations that apply to venues of varying sizes, but current state security legislation tends to focus on only large capacity venues. The Model Venue Safety Act aims to shift this focus to include smaller and mid-size venues.

D. Designation of Roles

Section (B)(2)(d) of the Model Venue Safety Act requires the designation of a Security Manager and a Crowd Manager to be present at live entertainment events and outdoor music festivals. *The Purple Guide* notes the importance of a clear understanding of allocation of safety-related duties.¹⁷⁸ *The Event Safety Guide* also recommends designating an

172. See, e.g., N.D. CENT. CODE ANN. § 53-02-01 (West 2019); TEX. OCC. CODE ANN. § 2104.001 (West 2019) (regulating only issuance of permits for outdoor music festivals with more than 5,000 attendees); see also N.Y. LAB. LAW §§ 475(1)–(2) (McKinney 2019) (requiring crowd control plans for "places of public assembly," which are deemed to be locations which can hold at least 5,000 attendees); OHIO REV. CODE ANN. §§ 2917.40(B)–(D) (West 2019).

173. See, e.g., § 53-02-08.

174. But see FLA. STAT. ANN. § 493.6301 (West 2019).

175. BARYLICK, *supra* note 112, at 103.

176. 23 R.I. GEN. LAWS ANN. § 23-28.1-7 (West 2018).

177. MASS GEN. LAWS ANN. ch. 148 § 26G1/2 (West 2004); see also *Deadliest U.S. Nightclub Fire Influences Safety Codes, Burn Care*, CBS NEWS (Nov. 28, 2017, 10:43 AM), <https://www.cbsnews.com/news/cocoonut-grove-boston-nightclub-fire-safety-codes-burn-care/> [<https://perma.cc/8MUK-GZYG>].

178. PURPLE GUIDE, *supra* note 97, at 2.

individual, with no “other competing roles,” to coordinate safety-related matters, such as “monitoring and coordinating safety performance,” and “coordinating safety in response to a major incident.”¹⁷⁹ The Security Manager required by the Model Venue Safety Act would take on such a role.

Both *The Event Safety Guide* and the *Purple Guide* discuss the importance of effective communication with attendees and the need for designated individuals to communicate with the audience in case of an emergency.¹⁸⁰ A perceived threat of violence can cause panic in event attendees and prompt actions that cause even more injuries than the actual threat itself.¹⁸¹ Therefore, there is a need for a designated individual tasked with communicating with the crowd in the case of an emergency or perceived emergency. For example, the Massachusetts statute calls for a trained crowd manager¹⁸² to perform duties including assuring that “audible announcements are made before each program or performance notifying occupants of emergency exit locations” and maintaining “clear paths of egress.”¹⁸³ Although the Massachusetts crowd manager requirement is mainly in place for fire safety purposes, the crowd manager role could also be used to ensure communication and more orderly evacuation in case of violence or a threat of violence at a live event or music festival venue. While the Security Manager’s role would be primarily to monitor safety performance, the requirement of a separate Crowd Manager would help to ensure effective communication and lessen safety issues caused by crowd panic. In addition, while Section (D) of the Act contains an enforcement provision calling for sanctions if a live entertainment or outdoor music festival venue owner fails to comply with the requirements of the Act, both the Security Manager and Crowd Safety Manager could also help to ensure enforcement by monitoring safety performance at the venue.

CONCLUSION

As the number of yearly concert attendees expands and violent incidents in venues become more reasonably foreseeable to venue owners and concert promoters, state legislatures should take action to prevent future injuries or deaths at live events and give venue owners and concert promoters a clearer understanding of how to keep from breaching their duties to concert attendees. The actions of the Rhode Island and Massachusetts state legislatures after the tragic Station nightclub fire demonstrate how states can also facilitate the creation of standard venue security guidelines to prevent or alleviate the effects of future violent incidents in concert venues. Like the model fire code of the NFPA and the ICC, *The Event Safety Guide* and *The*

179. EVENT SAFETY ALL., *supra* note 76, at 21.

180. *Id.* at 76–83; PURPLE GUIDE, *supra* note 102.

181. *See, e.g.*, Mervosh, *supra* note 33; *see also* Southall & Winston, *supra* note 33.

182. MASS GEN. LAWS ANN. ch. 148 § 10 (West 2004).

183. *See Crowd Managers*, *supra* note 136.

Purple Guide serve as useful models to supplement existing state statutes regarding venue security. Such existing statutes provide a good foundation to improve venue security guidelines. However, they do not contain sufficient standards to address recent concerns regarding violent incidents in venues.

Legislative action to create a Board of Live Entertainment and Outdoor Music Festival Security would allow for professionals with expertise in event production, security, law, and other fields to combine their knowledge and insight and create more up-to-date guidelines regarding venue security. Such legislation would help to prevent unnecessary deaths and injuries and avert future litigation against venue owners and promoters. The Board's ability to update security regulations would enable venue owners and promoters to properly protect attendees as threats evolve. Although every potential security threat cannot be anticipated, and security regulations will not stop every attempted violent act from taking place, legislation to regulate venue security guidelines would still likely prevent more violent incidents from occurring by giving venue owners and promoters a greater understanding of how to mitigate, and possibly prevent, such emergency situations. Although nothing can be done to fix prior security breaches and alleviate the pain caused by previous violent incidents, updated venue security legislation can help protect event attendees in the future and ensure that they return home safely.