



House Corrections Committee April 10, 2023

HB 2300

Relating to the eligibility of certain criminal defendants for an order of nondisclosure of criminal history record information.

Position: Support

Introduction

Thank you to the Chair, Vice Chair, and committee for convening today and taking time to consider the bills on your agenda for today. My name is Cole Meyer, and I am a Criminal Justice Policy Associate with Texas Appleseed. Our organization is dedicated to changing unjust laws and supporting policies that are data-driven, safe, and efficient.

Today, we are providing testimony *in support* of HB 2300. We would like to discuss the value of and need for expanding eligibility for access to orders of nondisclosure in Texas.

Background: Orders of Nondisclosure and the Need for Expansion

More than nine million Texans currently live with a criminal record¹, meaning they have at the very least been arrested. **Having a criminal record, whether it consists of a conviction or just an arrest, can drastically alter one's opportunities.** Some of these barriers include restrictions on one's ability to find employment, acquire housing, obtain public assistance, enroll in school, or care for one's children.²

Sealing one's record, also known as an order of nondisclosure, means a criminal record — including records of the arrest, court proceedings, sentence, etc. — can no longer be accessed by members of the public, landlords, and private employers.³ While inaccessible to the public, **the record still exists and can be accessed by the courts, law enforcement,** and some state agencies. **Currently, only people who successfully complete deferred adjudication or who are convicted of a first-time misdemeanor are eligible for record sealing under Texas law.**⁴

Given that **nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges use background checks to screen an applicant,**⁵ the need to expand eligibility for who qualifies for orders of nondisclosure under Texas law is imminent. By supporting HB2300, the legislature can increase opportunities for Texas families, improve public safety, and support economic growth across the state.

Increased Opportunities and Financial Stability for Texas Families

Two decades ago, an employer or landlord would not even be able to view one's record unless they obtained a physical file from the local courthouse. Now, a simple internet search provides them with a complete record. **Expanded record sealing in Texas would lead to increased access to employment, housing, education, and government benefits.**

Boosted employment opportunities, for instance, improve one's financial stability so they can provide for their own basic needs. Researchers have found that record sealing enforces this notion: **within one year of sealing, one's record, an individual's odds of being employed increase by a factor of 1.13 and their reported quarterly wages increase by a factor of 1.23.**⁶

These improved outcomes have a trickle-down effect on family members, particularly the children of those with records. For context, approximately half of U.S. children have a parent with some form of criminal record.⁷ Research demonstrates a correlation between children who are exposed to the criminal justice system through a caregiver and multiple adverse childhood outcomes: cognitive difficulty, being behind in school, teen parenthood, and teen crime.⁸ Not only would **sealing one's record represent a serious expansion of one's earnings and future opportunities, it would also mean people would have better chances of supporting their families long-term** and mitigating the adverse outcomes from involvement in the criminal justice system as a child.

Improved Public Safety through Reduced Recidivism

The overwhelming majority of people who become involved in the criminal justice system will return to their communities at some point, and a foundational goal of the system must be to rehabilitate people and prevent recidivism.⁹ The immense burden and negative consequences associated with having a record, however, exacerbates one's chances of reoffending. Not being able to meet one's most basic needs – such as adequate housing, gainful and steady employment, and childcare – may lead people to re-engage in crime to survive or cope with the stress of their situation.

Research demonstrates that record sealing reduces the chances a person will commit another crime by removing the stigma of a record and expanding life opportunities. Multiple studies have shown that those who are able to get their records sealed commit

crimes at a *lower* rate than the general adult population.¹⁰ Also, researchers have found that **99% of individuals who have their record sealed are not convicted of a felony, and 96% are not involved in any crime at all, within five years of sealing their criminal records.**¹¹ Ultimately, expanded record sealing creates safer communities with less crime as a result of the second chance people have to truly thrive and succeed.

Expansion of the Labor Pool and Economic Growth

Unemployment and underemployment of people with criminal records is hindering Texas' economic growth. Nationally, **about one-quarter of people with a record are unemployed, substantially higher than the overall unemployment rate of 4%.**¹² Many others with a record are underemployed, not making enough to support themselves and their families. As a result, **the United States sees an estimated \$372.3 billion in lost annual earnings from Americans impacted by conviction or imprisonment.**¹³

Texas is in the midst of a major labor shortage, with businesses struggling to find enough workers. Expanding record sealing eligibility to people with misdemeanors and felonies, such as HB 2300 seeks to do, would have a demonstrable impact on accelerating the growth of Texas' economy and expanding the state's labor force. One study found that **employing just 100 formerly incarcerated persons would increase their lifetime earnings by \$5.5 million and increase their income tax contributions by \$1.9 million.**¹⁴ Ultimately, giving people a second chance not only benefits them, but benefits the entire state as well.

Conclusion

The order of nondisclosure process in Texas needs great improvement. Access to record sealing is incredibly restricted in our state, largely limited to first-time misdemeanor convictions and cases dismissed after successful completion of deferred adjudication. **Given the inaccessibility of this process, very few people obtain orders of nondisclosure each year.** Of the hundreds of thousands of Texans who are estimated to qualify for record relief under current law, roughly only 5% have been granted said relief.¹⁵ Only 2,136 orders of nondisclosure were granted in Texas in 2021; 2,294 in 2020; and 2,136 in 2019.¹⁶

Texas Appleseed urges the House Committee on Corrections to favorably pass HB 2300, which would expand the pool of who qualifies to petition for an order of nondisclosure in Texas to include Texans who have a record with a felony conviction and have both met the requirements of their disposition and remained crime free for a proscribed period of time. Some charges involving intoxication, violence, and children do not apply.

Passing HB 2300 would allow people to meet their basic needs and successfully reintegrate into their communities. They would be empowered to maintain productive employment, advance their careers, and avoid future contact with the criminal justice system, ultimately making Texas a safer place for all to live. This bill would also alleviate labor shortages, boost the economy, and most importantly, grant second chances to those who deserve them. Thank you for your time and consideration. If you have any further questions or concerns, please do not hesitate to reach out.

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References & Endnotes

- ¹ Data from Texas Department of Public Safety (DPS). Total number of people in Texas who currently have any type of criminal history record that has not been expunged or sealed, on file with author (hereinafter "DPS Data").
- ² Murray, B. M. (2016). *A new era for expungement law reform-recent developments at the state and federal levels*. Harvard Law & Policy Review, 10, 361.
- ³ Clean Slate Texas. *Helpful Information*. Retrieved from <https://www.cleanslatetexas.org/eligibility>.
- ⁴ Tex. Gov't Code §§ 411.074.
- ⁵ Lo, K. (2020). *Expunging and sealing criminal records: How jurisdictions can expand access to second chances*. Center for American Progress. Retrieved from https://www.americanprogress.org/wp-content/uploads/2020/04/04-23_Expunging-and-Sealing.pdf. (hereinafter "Lo, Expunging and Sealing Criminal Records").
- ⁶ Prescott, J. J., & Starr, S. B. (2020). *Expungement of criminal convictions: An empirical study*. Harvard Law Review, 133(8), 2460-555.
- ⁷ Ibid.
- ⁸ Finlay, K., Mueller-Smith, M., & Street, B. (2022). *Measuring intergenerational exposure to the US justice system: Evidence from longitudinal links between survey and administrative data*. 2021 APPAM Fall Research Conference. APPAM.
- ⁹ Murphy, A., La Paz, E., & Hart-Armstrong, S. (2020). *Re-entry scoping memorandum*. Texas Appleseed. Report on file with the author.
- ¹⁰ Lo, *Expunging and sealing criminal records*, supra n. 5.
- ¹¹ Ibid.
- ¹² Couloute, L., & Kopf, D. (2018). *Out of prison & out of work: Unemployment among formerly incarcerated people*. Prison Policy Institute. Retrieved from <https://www.prisonpolicy.org/reports/outofwork.html>.
- ¹³ Craigie, T. A., Grawert, A., & Kimble, C. (2020). *Conviction, imprisonment, and lost earnings*. Brennan Center for Justice.
- ¹⁴ National Employment Law Project. (2016). *Research supports fair-chance policies*. Retrieved from <https://s27147.pcdn.co/wp-content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>.
- ¹⁵ Chien, C., Shekar, S., Ang, I., Lee, A., & Garg, C. (2022). *The Texas second chance non-disclosure/sealing gap*. Paper Prisons. Retrieved from <https://www.paperprisons.org/states/pdfs/reports/The%20Texas%20Second%20Chance%20Non-Disclosure:Sealing%20Gap.pdf>
- ¹⁶ DPS Data, supra n. 1.