



House Criminal Jurisprudence Committee

October 21, 2022

Interim Charge 2:

Study Texas' reentry and integration programs and make recommendations for reducing employment barriers for certain people with a criminal record. Review the length of time certain criminal offenses remain on a defendant's record and consider the impact of expanding the offenses that qualify for an order of non-disclosure. Evaluate the financial and administrative barriers in the petitioning process for record-clearing relief.

Introduction

Thank you to the Chair, Vice Chair, and committee for convening today and taking time to discuss these charges as we prepare for our upcoming legislative session. My name is Cole Meyer, and I am a Criminal Justice Policy Associate at 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 on interim charge 2. While charge 2 covers a number of issues related to reentry; we seek to address the order of non-disclosure process. Specifically, we would like to discuss the value of and need for expanding opportunities for non-disclosure in Texas.

Orders of Non-Disclosure in Texas: A Process in Need of Expansion

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. Minor convictions that took place decades ago, and even arrests that did not result in conviction, are included in one's criminal record. Even when someone is legally innocent of a crime, they could face barriers associated with having a record. 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

Given the easy, widespread access to online records through background check services and data brokers, nearly 9 in 10 employers, 4 in 5 landlords, and 3 in 5 colleges use background checks for screening applicants' records.³ 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 a complete record.

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.⁴ 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.⁵ Exceptions for violent and serious offenses still apply (e.g., murder, human trafficking).

Unlike nondisclosures, an expunction means that a criminal record and criminal history are effectively deleted completely, no longer accessible to anyone. Because the courts and law enforcement continue to have access to records that are sealed rather than expunged, recent expansions to records relief have focused on nondisclosure rather than expunction. Expunction in Texas is generally limited to people who were arrested and charged with a crime but who were never convicted or placed on formal community supervision.

Increased Opportunities and Financial Stability for Texas Families

Expanded record sealing in Texas would lead to increased access to employment, housing, education, and government benefits. Boosted employment opportunities, for instance, improves 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 recidivism⁹ (i.e., re-engaging in criminal activity after one has completed their sentence). But the immense burden and negative consequences associated with a record actually exacerbates one's chances of reoffending. Not being able to meet one's most basic needs post-release (e.g., adequate housing, gainful and steady employment, and childcare) may lead people to crime in order to survive or to cope with the stress of the 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 percent of individuals who have their record sealed are not convicted of a felony and 96 percent 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. Expanded record sealing 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 non-disclosure process in the state of Texas needs great improvement. Access to record sealing is incredibly restricted in our state, limited to first-time misdemeanor convictions and cases dismissed after successful completion of deferred adjudication. In addition to the offenses that are currently eligible, the legislature should allow people to petition to seal more than one misdemeanor conviction, as well as state jail felony convictions, the most common of which is Possession of a Controlled Substance.

Additionally, the Texas legislature should consider automating the record sealing process. The current process to seal one's record in Texas is quite burdensome, requiring the person to file a petition meeting the legal requirements and demonstrating their qualifications for an order of nondisclosure. Most people do not know whether they are eligible, and it can be very difficult to determine eligibility without the assistance of an experienced attorney, which can be costly. Given the difficulty of the process, very few people obtain orders of nondisclosure each year. Only 2,136 orders of nondisclosure were granted in Texas in 2021; 2,294 in 2020; and 2,136 in 2019.¹⁵

The process to petition the court for relief is difficult without the assistance of an attorney, which can be costly. Given the difficulty of the process, very few people obtain orders of nondisclosure each year. Texas should move to automate the record sealing process, given the significant obstacles that currently prevent people who are eligible from sealing their records.

People should not be punished for years after release and effectively sentenced to a lifetime of poverty because of a criminal record. These legislative reforms 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. These reforms 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.

Cole Meyer
Policy Associate, Criminal Justice Project
Texas Appleseed
cmeyer@texasappleseed.org

References

- ¹ Data from Tex. Dep't of Public Safety, 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 Lo, K. (2020, Apr. 15). *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").
- ⁴ *Helpful Information*. (n.d.). Clean Slate Texas. Retrieved from <https://www.cleanslatetexas.org/eligibility>.
- ⁵ Tex. Gov't Code §§ 411.074.
- 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. 3.
- ¹¹ Lo, *Expunging and sealing criminal records*, supra n. 3.
- ¹² Couloute, L., & Kopf, D. (2018, Jul.). *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 *Research supports fair-chance policies*. (2016, Aug.). National Employment Law Project. Retrieved from <https://s27147.pcdn.co/wp-content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>.
- ¹⁵ DPS Data, supra n. 1.