Texas
APPLESEED

House Criminal Jurisprudence Committee
March 14, 2023

HB 1737
Relating to automatic orders of nondisclosure of criminal history information for certain misdemeanor defendants following successful completion of a period of deferred adjudication community supervision.

Position: Support

Introduction

Thank you to the Chair, Vice Chair, and committee for convening today and considering the various bills that have been referred to your committee. 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 written testimony *in support of* HB 1737, which seeks to automate the order of non-disclosure process in Texas. Attached to this testimony is an issue brief offering a more comprehensive review of the information touched on here.

Background

More than nine million Texans currently live with a criminal legal record[1], meaning they have at the very least been arrested. **Having a criminal legal 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 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]

The process of applying for sealing a record is burdensome, costly, and difficult to accomplish without counsel. The application process also requires a fee payment, creating an additional obstacle to obtaining relief. Automation would cease the fee petition waiver application requirement, creating a process by which the Department of Public Safety (DPS) and courts can easily identify those entitled to relief.

Increased Opportunities and Financial Stability for Texas Families

Automated 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 the 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 legal 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 delinquency.[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 being "system-involved."

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] (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% 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 also amid a major labor shortage, with businesses struggling to find enough workers. Enacting automatic record sealing legislation, like HB 1737, 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 communities they return to as well.

Conclusion

The order of non-disclosure process in the state of Texas needs to be improved. 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] Two-thirds of registered voters in Texas support automatic record sealing.[16] While 7 in 10 Texans believe that denying people opportunities past the end of their sentences makes it harder for them to reintegrate and likelier, they'll recidivate.[17]

Texas Appleseed urges this Committee and the House to favorably pass HB 1737, which would automate the record sealing process for those who are currently eligible for an order of nondisclosure. Automation would eliminate the need for people to determine their own eligibility for relief, to navigate the confusing court processes, or to pay a fee to obtain relief; and enable countless more people to access record sealing relief than are able to access it now. We must enact Clean Slate legislation, like HB 1737 to ensure all Texans have access to redemption and a second chance at prosperity.

Thank you, again, for your time and consideration. If you have any further questions, comments, or concerns, please feel free to contact me.

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References & Endnotes

[1] Data from Texas Department 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.

[16] Clean Slate Texas. Texans' Support for Change. Retrieved from https://www.cleanslatetexas.org/texans-support-for-change.

[17] Ibid.