



Clean Slate Texas: Record Sealing Criminal Justice Project Issue Brief (February 2023)

INTRODUCTION¹

More than nine million Texans have a criminal record,² substantially diminishing opportunities to obtain employment, advance careers, access affordable housing, and further education.³ The consequences of a criminal record make it difficult for Texans – even those with low-level charges or who have not been involved in the criminal justice system for many years – to successfully reenter their communities and to support their families.

Record sealing, also known as an order of non-disclosure, limits accessibility of one's record to the courts, law enforcement, and some state agencies. Texas law allows individuals to petition to seal or expunge their record only in certain circumstances. Members of the public, landlords, and private employers cannot see any criminal record after it has been sealed. **Expungement effectively and completely deletes a criminal record, criminal history, or both, making the records inaccessible.** However, the law governing who can expunge criminal history and effectively seal records is complex and narrow, making it difficult to obtain relief. The charge, the outcome of the case, other convictions on record, and how long it has been since release from incarceration or completion of a sentence all affect whether a person is eligible for expungement or record sealing. Most people do not even know if they are eligible to have their record sealed.⁴

The process of applying for sealing a record is burdensome, costly, and complicated. The process requires an initial petition with the court, a difficult task to accomplish without counsel. The application process also requires a fee payment, creating an additional obstacle to obtaining relief.

Record sealing serves the state and the community in promoting successful reentry and financial stability. Texas should **expand eligibility to criminal record sealing** to enhance access to education, jobs, and housing without the stigma of a criminal record. Texas should also **automate the record sealing process** and eliminate obstacles that currently prevent eligible individuals from sealing their records. Automation would cease the fee petition waiver application requirement, creating a process by which the Department of Public Safety and courts can easily identify those entitled to relief. Expanding and automating the record sealing process for the nine million Texans living with records would alleviate labor shortages, boost the economy, and provide a second chance to contribute to the community and the State.

KEY FACTS

- Roughly 32% of Texans have a criminal record.⁵ With law enforcement in Texas making more than one million new arrests annually, this number is rapidly increasing.⁶
- Nearly nine in ten employers, four in five landlords, and three in five colleges use background checks to screen for applicants' criminal records.⁷
- A person with a criminal record is 50% less likely to receive an interview or a job offer.⁸
- The United States sees approximately \$372.3 billion in lost annual earnings from Americans impacted by a criminal record.⁹
- 70% of Texans believe our criminal justice system does not do enough to prepare those convicted of crimes to re-enter their communities after the completion of their sentence.¹⁰

- Two-thirds of Texans support automatic record sealing for those with misdemeanor and low-level felony offenses.¹¹

BACKGROUND

Nine million Texans currently live with a criminal record, meaning at the very least, they have 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 occurred decades ago, and even arrests that did not result in conviction, are included in a criminal record.¹² Even when acquitted of a crime, individuals could face barriers associated with having a record.¹³ Some of these barriers include restrictions on the ability to find employment, acquire housing, obtain public assistance, enroll in school, or care for children.¹⁴

Given the easy, widespread access to online records through background check services and data brokers, nearly nine in ten employers, four in five landlords, and three in five colleges use background checks for screening applicants' records.¹⁵ Two decades ago, an employer or landlord would not even be able to view an applicant's record unless they obtained a physical file from the local courthouse.¹⁶ Now, a simple internet search provides a complete record.

Sealing a record, or obtaining an order of nondisclosure, including records of the arrest, court proceedings, and sentence, means a criminal record can no longer be accessed by the public, landlords, or private employers.¹⁷ While inaccessible to the public, the record still exists and can be accessed by the courts, law enforcement, and some state agencies. Currently, only those who successfully complete deferred adjudication or who are convicted of a first-time misdemeanor are eligible for record sealing under Texas law.¹⁸ Exceptions for violent and serious offenses still apply (e.g., murder, human trafficking).

Unlike nondisclosures, an expungement means that a criminal record and criminal history are effectively deleted completely, no longer accessible to the public. 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. Expungement in Texas is generally limited to those 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 financial stability and ability to provide for basic needs. Researchers suggest our nation's poverty rate would have dropped by 20 percent over the past several decades if not for the barriers caused by incarceration and criminal records.¹⁹ However, sealing records helps to alleviate this barrier: within one year of sealing a 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 1.23.²⁰

The effect of record sealing improves outcomes for family members, particularly the children of those with records. For context, approximately half of children in the United States have a parent with some form of criminal record.²¹ 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.²² Not only would sealing a criminal record expand earnings and future opportunities, individuals would also have a better chance of supporting their families long-term and mitigating the adverse outcomes from juvenile involvement in the criminal justice system.

IMPROVED PUBLIC SAFETY THROUGH REDUCED RECIDIVISM

Most 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 and prevent recidivism (i.e., re-engaging in criminal activity after one has completed their sentence).²³ But the burden and negative consequences associated with a criminal record actually increases the chance of reoffending. Being unable to meet basic needs post-release (e.g., adequate housing, gainful and steady employment, and childcare) may lead to recidivism to survive or to cope with the stress of day-to-day living.

Research demonstrates that record sealing reduces the chances a person will commit another crime. Removing the stigma of a record expands life opportunities. Studies show that those who are able to get their records sealed commit crimes at a *lower* rate than the general adult population.²⁴ Researchers find that 99 percent of individuals who have their records 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.²⁵ 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%.²⁶ 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.²⁷

Texas is amid 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.²⁸ Ultimately, providing a second chance not only benefits individuals, but the entire state as well.

The record sealing process in Texas is burdensome, requiring the filing of a petition that meets particularized legal requirements and demonstrates the individual's eligibility for an order of nondisclosure. To start, 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. In addition, the process to petition the court for relief is difficult without legal representation, which can be costly. Given the difficulty of the process, very few people obtain orders of nondisclosure. Only 2,136 orders of nondisclosure were granted in Texas in 2021; 2,294 in 2020; and 2,136 in 2019.²⁹ These numbers are but a small representation of the number of people who qualify for nondisclosure orders. An examination of court cases in Harris County alone, conducted by January Advisors and Beacon Law, initially identified over 400,000 cases that are likely eligible for record sealing or expunction.³⁰ Further conversations with January Advisors and Beacon Law indicated that as methodology was refined, the estimate of those eligible for record-sealing is closer to 640,000 in Harris County alone.

Between 2018 and 2022, three states with similarly burdensome processes enacted laws to streamline the process of record sealing. These "Clean Slate" laws allow eligible individuals to have their records sealed without going through the typical petition process. In 2018, Pennsylvania pioneered an automated record clearing system. The State's legislation was backed by bipartisan support with 71% of Americans, including 62% of Republicans, supporting the reform.³¹ Since implementation, over 1.2 million Pennsylvanians have had their records sealed.³² Utah lawmakers unanimously passed a Clean Slate law in 2019, automatically clearing old and minor criminal records of individuals who have remained crime free for a set period of time.³³ And in 2022, Oklahoma enacted Clean Slate legislation, creating an automatic process for qualifying misdemeanor records and records not resulting in a conviction. Representative Nicole Miller (R- Edmond) led the effort, stating how

the legislation will “benefit the state by helping people who have been incarcerated gain employment and become productive members of society.”³⁴ Given that millions of Texans possess a criminal record, Clean Slate legislation could remarkably improve the lives of as many individuals.

TEXANS’ SUPPORT FOR CHANGE

In November 2022, Change Research and WPA Intelligence conducted a bipartisan poll of 2,333 Texas voters to gauge their thoughts on record sealing.³⁵ The results show that a majority of voters across both political parties believe that denying opportunities to people who have completed the terms of their sentences is both inefficient and antithetical to notions of public safety. Further, two-thirds of Texans support automatic record sealing for those with misdemeanor and low-level felony offenses to ensure these records cannot be seen by private entities. These findings illustrate Texans’ desires to provide second chances through record sealing to ensure people are not blocked from achieving prosperity after the completion of a sentence.

RECOMMENDATIONS FOR REFORM

Automate the record sealing process for those currently entitled to record sealing relief. Texas should automate the record sealing process for those who are already entitled to an order of nondisclosure under state law.³⁶ Courts would query their records on a regular basis for eligible individuals and provide the necessary information to the Department of Public Safety without a person ever filing a petition. 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. HB 3601, which successfully passed the House in the 87th legislative session, was a bill that automated this process and would have enabled thousands to obtain nondisclosure. Automation would enable thousands more people to access record sealing relief than are able to access it now.

Expand eligibility for record sealing. Access to record sealing is incredibly restricted in Texas, 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. Expanding record sealing eligibility requirements would provide relief for thousands of individuals.

CONCLUSION

By enacting expansive Clean Slate legislation, along with expanding eligibility for record sealing, the State of Texas would provide relief to thousands of Texans burdened by a criminal record. People should not be punished for years after release, effectively sentenced to a lifetime of poverty because of a criminal record. These legislative reforms would allow individuals to meet 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. We must enact Clean Slate legislation to ensure all Texans have access to redemption and a second chance at prosperity.



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REFERENCES & ENDNOTES

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