



# Criminal Background Checks

## Criminal Justice Project

### Issue Brief (2025)

## INTRODUCTION

Criminal Background Checks (CBCs) are a widely used mechanism in assessing candidates' applications for a variety of opportunities, including housing, employment, private and business lending, occupational licensing, and even adoption. While CBCs provide security and peace of mind to those doing the checking, the individuals on the other side - the checked - experience consistent roadblocks and collateral consequences due to CBCs.<sup>1</sup> The potential consequences associated with a CBC emphasize the need for information presented to be as accurate as possible, and for CBCs to only reflect actual criminal convictions. That is often not the case in both Texas and in the United States at large.<sup>2</sup>

The list is lengthy and the consequences are far-reaching. A CBC can reflect a record that does not include a conviction, such as an arrest, charge, or indictment. While these records do not prove whether an individual has actually engaged in criminal behavior, their presence in a report could negatively impact the opportunity they are pursuing.<sup>3</sup> In the case of employment, these records can prematurely infer criminality to the employer and reduce the candidate's chances of being hired, even when charges are dropped or a court finds the person not guilty. A CBC can also include records that are older than the recommended "look-back" period, making applicants beholden to long-past and potentially outdated information. In Texas, the record cannot predate the consumer report by more than seven years.<sup>4</sup> Individuals can also be impacted by incorrect information - such as being mistaken for a different person based on common names or birth dates - or be negatively impacted by records that have been expunged or sealed by the state. An expunged record should be completely erased from one's record, and a sealed record should only be viewable by the courts, police, and other state agencies.<sup>5</sup>

The link is evident: a poor background check results in the denial of opportunities.<sup>6</sup> Employment, housing, education, lending, and licensing are vital components of everyday life. Not only are CBCs necessary tools of advancement for individuals being checked, but the checker relies on them just as heavily. If a quality candidate is deprived of a job opportunity because of a faulty background check, it is a blight on the individual, the employer, and the economic well-being of the community. As vital as these opportunities are to society, so too should the concern regarding their accuracy and fidelity. Criminal background check reform in Texas is a necessary step as we work towards a Talent Strong Texas where individuals can attain prosperity in all aspects of life.

## KEY FACTS

- 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.<sup>7</sup>
- Almost 40 percent of schools do not admit students who have not completed their term of community supervision.<sup>8</sup>
- Two-thirds of registered voters in Texas believe that the state should remove barriers to housing, education, and employment for those with criminal records.<sup>9</sup>
- Seven in ten Texans say that denying people opportunities for housing, education, and employment hinders their reintegration efforts.<sup>10</sup>
- 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.<sup>11</sup>

## BACKGROUND

A background check for Texas employment offers key information about a candidate's work experience, qualifications, and personal history. The Texas Department of Public Safety (DPS) provides statewide name- and fingerprint-based criminal background checks. Employers may also choose to work with a third-party background check provider - a consumer reporting agency - to conduct these checks.<sup>12</sup>

The Crime Records Division (CRD) of Texas DPS is the state entity in charge of collecting and handling criminal history information.<sup>13</sup> CRD collects information by drawing upon data tied to fingerprint records and collected by federal, state, and local law enforcement agencies often relying on matching individuals' information against state and local court or police records.<sup>14</sup> DPS states that only "legislatively authorized entities" can access the secure criminal history database and that each time an authorized organization conducts an initial search, they are charged \$1.<sup>15</sup> It is important to note that a substantial number of public and private organizations are "legislatively authorized". Examples of private organizations are: private schools and universities, residential dwellings, volunteer centers, safe houses, private health providers, volunteer children's activity providers, and in-home residential service and delivery companies.<sup>16</sup> Examples of public organizations include: cities, counties, school districts, higher education facilities, hospitals, housing authorities, public transportation, and state agencies.

There are also private entities that conduct criminal background checks, formally called consumer reporting agencies. **Consumer reporting agencies are entities that regularly engage in assembling or evaluating consumer credit information, to subsequently furnish reports on consumers' (criminal) backgrounds.**<sup>17</sup> Rather than using fingerprints to determine an individual's identity, commercial background check vendors typically use a person's name, date of birth, and Social Security number to gather information.<sup>18</sup> Most commercial background checks are conducted by cross-referencing an individual's self-reported information with online public records and data purchased from courts and state repositories.<sup>19</sup> In Texas, various public agencies across the state participate in selling records to private entities. These include, but may not be limited to: 1) the Crime Records Division, a division of the Department of Public Safety; 2) County and District Courts; and 3) the Criminal Justice Assistance Division (CJAD), a division of the Texas Department of Criminal Justice.<sup>20</sup> To CRAs, these entities are the "pots of gold" where records originate. Once purchased, they can be subsequently sold from one CRA to another.

Consumer Reporting Agencies (CRAs) produce "regulated" criminal background checks. To be "regulated, a CBC must comply with federal background check regulations established under the Fair Credit Reporting Act

of 1970 (FCRA) for employment and housing determinations.<sup>21</sup> CRAs draw on various data sources, including established databases of bulk criminal record data (e.g., Texas CRD, Texas CJAD), third-party data purveyors,<sup>22</sup> and in some cases “court runners” who obtain criminal record information directly from courthouses.<sup>23</sup> A credit report can contain information relating to the creditworthiness, debts, personal characteristics, and/or mode of living of a consumer.<sup>24</sup> It can also hold criminal records, which in Texas includes everything from a conviction all the way down to an arrest.<sup>25</sup>

A recurring issue with criminal background checks is the variability in the accuracy of one’s information. **People’s records may differ across CRAs as some do not update their databases on a consistent basis, thus leaving people’s records incorrect and outdated if they later had their disposition updated or their records sealed/expunged.** The FCRA requires that background check companies “maintain strict procedures” to ensure the accuracy and completeness of any public information that could be used to deny employment. However, because of the impracticality of this maintenance and the lack of enforcement mechanisms available, background check companies are often absolved from the responsibility of updating their databases in a timely manner.<sup>26</sup>

## REGULATIONS

### *Federal*

As previously mentioned, background checks conducted by commercial vendors are legally considered consumer reports and are federally regulated by the Fair Credit Reporting Act (FCRA).<sup>27</sup> The FCRA generally requires furnishers and purveyors of data to:

- Provide candidates with written federal, state, and/or local disclosures about the background screening process.
- Get written consent from each candidate before conducting background checks.
- Provide a copy of the background check report to the candidate, if the candidate requests it (depending on the jurisdiction, some entities are required to affirmatively offer a copy of the report to the candidate).
- Follow the adverse action process if the candidate is not offered a job due to information revealed in a background check.<sup>28</sup>

Moreover, the FCRA restricts non-conviction information reported by a consumer reporting agency to a 7-year look-back period, which includes arrests, civil judgments, tax liens, and most credit report information.<sup>29</sup> Criminal convictions may be reported indefinitely.<sup>30</sup> However, the FCRA preemption clause allows states that had differing “look-back” periods prior to 1995 to grandfather those provisions into statute. Texas statute operates under this grandfather clause, capping the “look-back” period at 7 years for all criminal history information.

### *State*

In Texas, there is generally no statewide background check law that restricts employers from inquiring about a candidate’s criminal history on a job application or running a criminal background check during the hiring process.<sup>31</sup> Per the Texas Business & Commerce Code, a consumer reporting agency may furnish a consumer report relating to one’s criminal record if the record is less than 7 years old. There is no “look-back” limit if an applicant is applying for a job with an annual salary expectation of \$75,000 or more.<sup>32</sup>

Some Texas cities and counties have strayed from state practices by enacting Fair Hiring laws.<sup>33</sup> These laws impact how or when employers may request such information, such as waiting to conduct a background check until a job offer has already been made to an applicant.

## THE DISPUTE PROCESS

If a consumer credit report contains inaccurate information, it can result in the denial of opportunities to an applicant. In some instances, a consumer may only become aware of an inaccuracy after they are denied an opportunity because of the contents of a report.<sup>34</sup> If one's criminal history information is incorrect or outdated, one must file a dispute to correct the inaccuracies. In Texas, Section 20.05 of the Business & Commerce Code provides a dispute process for correcting inaccuracies. However, the onus is on the individual to navigate this process. It is up to the consumer to notify the consumer reporting agency of any inaccuracies in their report, which can involve contacting the CRA by phone or mail, filing a formal notice, and eventually requesting a new copy of one's report.<sup>35</sup>

After a dispute is filed, the CRA must reinvestigate the disputed information at no charge and update one's information no later than the 30th business day after the dispute was received.<sup>36</sup> A CRA retains the right to terminate a reinvestigation if they can reasonably determine that the dispute is frivolous or irrelevant.<sup>37</sup> However, this standard is difficult to achieve as the presence of contradictory or inaccurate information in one's file does not, by itself, constitute a frivolous claim.<sup>38</sup>

When disputed information is found to be inaccurate (or cannot be verified), the CRA shall promptly delete and/or revise the information in the consumer's file. They must also provide the revised consumer report to the consumer and notify any entity that requested the consumer report within the preceding 6 months.<sup>39</sup> Information that is deleted may never be reported again unless another reinvestigation affirms the accuracy and completeness of the information.

## WHY THE ISSUE IS RIPE FOR REFORM

Over 9 million Texans have a criminal legal record, meaning they have at least been arrested.<sup>40</sup> This is a concerning proliferation from the 4.7 million Texans with a criminal record in 2013, exemplifying the pervasive impact of law enforcement making over 1 million arrests annually statewide.<sup>41</sup> **Minor convictions that took place decades ago, and even arrests that did not result in conviction, are included in one's record.** Thus, even when someone is legally innocent of a crime, they could have criminal history information published on a consumer report.

Further examination of these records shows that an estimated 5.3 million Texans currently qualify for some form of record relief, largely through petitions for orders of nondisclosure and/or expunction.<sup>42</sup> Individuals are only eligible for expunction if they have been acquitted of charges or if their arrest results in a non-conviction and they are not court-ordered to community supervision. Over 4 million individuals are currently eligible for expunction across the state, largely stemming from cases that have been dismissed by a judge. These cases largely include low-level drug possession, driving while intoxicated, unlawful carrying of a weapon, and low-level theft, amongst other charges.<sup>43</sup> Black clients would greatly benefit from these opportunities for expunction; they represent over 21 percent of those eligible for this form of record relief despite representing only 13 percent of the Texas population.<sup>44</sup>

In Texas, only people who successfully complete deferred adjudication or who are convicted of a first-time misdemeanor are eligible for record sealing under state law.<sup>45</sup> Of the remaining 1.3 million cases currently eligible for non-disclosure, roughly 57 percent are eligible for completing their deferred adjudication while the remaining 43 percent are eligible due to having first-time misdemeanor convictions only.<sup>46</sup> These cases largely include driving while intoxicated, low-level drug possession, low-level theft, and criminal trespassing, amongst other charges.<sup>47</sup>

Amongst all individuals eligible for record relief, the average length of time since one's arrest is over 15 years, and the average length of time since one's eligibility began is over 12 years. These opportunities for the relief are particularly fruitful for residents in Texas' largest counties. Over 1 million Texans in Harris County and almost 500,000 Texans in both Tarrant and Bexar County are eligible for expunction or non-disclosure. But while the benefits would be wide-reaching, these individuals have not been able to find relief through these initiatives.

As discussed above, a recurring issue with criminal background checks is potential inaccuracies in one's information. For those who do obtain relief through expunctions and/or orders of non-disclosure, their criminal history in a consumer reporting agencies' database still has the possibility of reflecting irrelevant arrests and charges. For instance, someone's record may differ across CRAs as some do not update their databases on a consistent basis; this could leave someone's record incorrect and outdated if they recently had their disposition updated and/or their record sealed or expunged.

Despite the FCRA requiring CRAs to "maintain strict procedures" to ensure the accuracy and completeness of any public information that could be used to deny employment, the impracticality of this maintenance and the lack of enforcement mechanisms available often absolves background check companies from the responsibility of updating their databases in a timely manner.<sup>48</sup> These inconsistencies can produce consequential outcomes for those grappling with a criminal record, including restrictions on one's ability to find employment, acquire housing, obtain public assistance, enroll in school, or care for one's children.

## **THE IMPACT ON HOUSING**

The ubiquity of background checks in the housing sector erects barriers for people to secure private housing.<sup>49</sup> Property managers have the discretion to deny renting to people with any type of criminal record, whether that is a misdemeanor conviction or even an arrest that resulted in a charge dismissal.<sup>50</sup> The difficulties in finding a place to live can cause familial instability and even homelessness, which in turn is a predictive factor for criminal activity.<sup>51</sup> When experiencing homelessness, crimes are committed both out of survival and because private lives turn public. Crimes such as burglary, loitering, and drinking in public spaces, while classified as misdemeanors, can potentially put those with a criminal record behind bars.<sup>52</sup>

The cyclical connection between homelessness and incarceration is a revolving door. Those experiencing homelessness are 11 times more likely to be incarcerated in comparison to the general population, while post-release individuals are almost 10 times more likely to be homeless.<sup>53</sup> Providing a pathway to housing directly reduces recidivism rates and in turn, reduces the strain on social services and the cost of incarceration for the state of Texas. One study found that previously incarcerated people who had access to housing upon release had lower recidivism rates than those who did not have access to housing upon release.<sup>54</sup> To that end, background check reforms in Texas statute would expand opportunities for our state's families to obtain secure housing and simultaneously improve public safety.

## **THE IMPACT ON EMPLOYMENT**

Employment plays a key role in the desistance of people with records.<sup>55</sup> Work can assist reintegration efforts by promoting opportunities to practice pro-social behavior and create positive social connections, which in turn discourages criminal behavior. From a practical standpoint, steady employment provides financial stability, potentially eliminating the need for illicit income sources, such as petty theft or engagement in drug-related offenses.<sup>56</sup>

For many individuals who have been involved in the legal system, the desire to re-enter the job market and obtain gainful employment is often stifled by the proliferation of criminal background checks.<sup>57</sup> In one study,



formerly incarcerated applicants were about 50 percent less likely to receive a response from employers than applicants without a criminal record.<sup>58</sup> This difficulty in obtaining a job for people with records is tangible. Nationally, about 77 million Americans, or 1 in every 3 adults, have a criminal record.<sup>59</sup> About one-quarter of formerly incarcerated people are unemployed, a percentage that is substantially higher than the overall unemployment rate of 4 percent.<sup>60</sup>

As of July 2024, there are over 8 million unfilled positions nationwide.<sup>61</sup> In Texas, certain sectors have been more heavily impacted by the labor shortage, like the trucking industry and construction industry.<sup>62</sup> As the research shows, the unemployment and underemployment of those with criminal records are hindering our workforce and setting our local economy back. Employment provides secure income and allows people to become self-reliant, enabling them to provide for themselves and their families.<sup>63</sup> Job stability also provides informal social control and creates new and positive social networks that can protect against re-engaging in criminal activity.<sup>64</sup> Additionally, those with a criminal record tend to stay longer in their roles and are not more inclined to be fired due to misconduct compared to their counterparts without a record.<sup>65</sup> In this regard, enacting legislation that limits the scope of background checks and protects the rights of consumers would have a demonstrable impact on the state's labor force and our local economies.

## **THE IMPACT ON EDUCATION**

Education is greatly impacted by the presence of a criminal record, and it is heavily tied to employment opportunities. Education is considered one of the most cost-effective strategies for successful reentry for those with criminal records; it deters recidivism, reduces unemployment, and increases public safety by making people more productive community members.<sup>66</sup> Yet, people with criminal records are at a disadvantage when applying to institutions of higher learning. **One study found that 70 percent of four-year colleges, including 81 percent of private and 55 percent of public colleges, require applicants to disclose their criminal record and background in their applications.**<sup>67</sup> Applicants are often required to provide complete criminal histories, authorizations for schools to access their records, and/or letters from their parole officer(s).<sup>68</sup> Some schools also impose "criminal-justice-related automatic bars" to admission, such as barring people under any form of community supervision from enrolling in the institution.<sup>69</sup>

A critical component for successful reintegration includes social connection and prosocial behavior. If those with a criminal record are not able to obtain an education, they have limited opportunities to create social connections and practice prosocial behavior, which is shown to reduce both violent and non-violent crime by 20 percent.<sup>70</sup> The barriers currently in place are deterring individuals from accessing the tools needed for growth and stability. By improving the management and accuracy of criminal records, the state of Texas can remove barriers for prospective students, allowing for economic and social mobility for Texans and strengthening public safety within our communities.

## **DISPROPORTIONATE BURDEN ON COMMUNITIES OF COLOR**

Because racial bias permeates every aspect of the criminal justice system,<sup>71</sup> black and brown Texans bear the brunt of negative criminal background check outcomes. In housing, research shows that the inability to find a place to live after an arrest or conviction disproportionately affects communities of color.<sup>72</sup> In employment, studies show that Black applicants with criminal records are not only treated worse than individuals without criminal records, they are also treated worse than white applicants with similar criminal records.<sup>73</sup>

Current literature establishes that stable housing, gainful employment, and higher education are all avenues to reduced recidivism and a strengthened workforce. Yet, the burdens experienced by communities of color increase the likelihood of deeper involvement with the justice system. People cannot desist from criminal activity and reach prosperity if they are unable to access the resources needed to catalyze this change.

# RECOMMENDATIONS FOR REFORM

To promote transparency, reduce inaccuracy, and mitigate potential harm in the criminal record-selling process, Texas Appleseed recommends the following reforms:

- **Amend Section 20.05 of the Business & Commerce Code to prohibit the sale of criminal history record information to private entities until a disposition is entered, and only sell information if that disposition is a conviction.** By only selling the criminal records of arrests leading to convictions, the state of Texas can drastically reduce inaccuracies and outdated information in an individual's criminal history. This practice is already employed in several district courts across Texas. Travis County District Court exemplifies this practice by only selling criminal records once a disposition is established and does not sell records that could be eligible for expunction or orders of nondisclosure.<sup>74</sup>
- **Amend Sections 20.06 and 20.07 of the Business & Commerce Code to require that consumer reporting agencies give notice to consumers of dispute resolution for inaccurate information and require that they send a corrected report to the consumer.** Just as consumers have a right to dispute inaccurate information, they should also receive a corrected copy of their credit report, free of charge, to ensure their information has been changed and corrected.
- **Amend Section 411.084 of the Government Code requiring that DPS be the only clearinghouse for the sale of consumer's criminal history information. Additionally, add language to this code stipulating that DPS publish on their website, the sale of consumer information - including every CRA sold to, the date they sold the information, and that companies contact information.**  
Through centralizing the sale and distribution of criminal records, Texas can ensure uniformity of record sales and compliance with updates to records (orders of nondisclosure and expunction).

## CONCLUSION

By enacting proactive background check legislation, the State of Texas would provide relief to thousands of Texas burdened by a legal record. The current consequences of a criminal record make it difficult for those who may not even have convictions to successfully support themselves and their families. The benefits that will be gained from making the recommended changes are evident. These reforms can reduce barriers for the millions of Texans with criminal records who are trying to obtain housing, employment, and/or education. Newfound access to these opportunities can contribute to economic growth and a strengthened workforce, reduced recidivism, and safer communities.



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<sup>21</sup> Lageson, Sarah, and Robert Stewart. "The problem with criminal records: Discrepancies between state reports and private-sector background checks." *Criminology* 62, no. 1 (2024): 8.

<sup>22</sup> A third-party purveyor is an entity that collects, aggregates, and sells data it gathers from various external sources to other businesses and organizations. These purveyors do not collect the data directly from the individuals or organizations being analyzed. Instead, they acquire it through various external channels, like businesses, public databases, or online activity, and then package it to sell or license to customers for purposes like marketing, analytics, or business intelligence. See Larson, M. (Mar. 2024). "What is third-party data?" 97th Floor. Retrieved from

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<sup>28</sup> The adverse action process is a set of steps that employers must follow when they take adverse action against a candidate or employee based on the results of a background check. To comply with the FCRA, entities must send a pre-adverse action notice and a final notice of adverse action. The final notice should include what the entity did, why they took that action, and which information in the consumer report they used. It should also include a free copy of the consumer report, information about the individual's right to dispute inaccurate information, and how the final decision will be made. See *The Basics of Adverse Action* (2023), Checkr, Retrieved from <https://checkr.com/blog/basics-of-adverse-action>.

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<sup>32</sup> Texas Business & Commerce Code, Chapter 20, Article 20.05 § (4). Retrieved from <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.20.htm#20.05>.

<sup>33</sup> "Ban the Box" campaigns are an example of Fair Hiring Laws. It is a campaign and policy that aims to remove the criminal history checkbox from job applications and delay background checks until later on in the hiring process. See Hubein, Danielle. "Guide to Texas Background Checks." Checkr, March 2, 2023. <https://checkr.com/background-check/texas>.

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<sup>36</sup> Tex. Bus & Com § 20.06 (2014). ("After receiving notification of a dispute, the agency has 5 days to give notice to each person or entity that provided any information related to the dispute.")

<sup>37</sup> Tex. Bus & Com § 20.06 (2014)

<sup>38</sup> Tex. Bus & Com § 20.06 (2014)

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- <sup>42</sup> Working in partnership with Texas Appleseed and Senator Royce West's office, January Advisors obtained a copy of the full Computerized Criminal History database from the Department of Public Safety to analyze the feasibility of statewide record clearing initiatives. Through this analysis, January Advisors found that as of October 29, 2024, an estimated 4,059,433 cases are eligible for expunction and 1,334,975 cases are eligible for non-disclosure. Data analysis on file with the authors.
- <sup>43</sup> Working in partnership with Texas Appleseed and Senator Royce West's office, January Advisors obtained a copy of the full Computerized Criminal History database from the Department of Public Safety to analyze the feasibility of statewide record clearing initiatives. Data analysis including the common charges that are eligible for expunction are on file with the authors.
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- <sup>46</sup> As of October 29, 2024 - of the 1,334,975 cases currently eligible for non-disclosure - 764,859 cases are eligible due to deferred adjudication (57 percent of cases) while 570,016 cases are eligible due to first time misdemeanor convictions (43 percent of cases). January Advisors data analysis on file with the authors.
- <sup>47</sup> Working in partnership with Texas Appleseed and Senator Royce West's office, January Advisors obtained a copy of the full Computerized Criminal History database from the Department of Public Safety to analyze the feasibility of statewide record clearing initiatives. Data analysis including the common charges that are eligible for nondisclosure are on file with the authors.
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