

[2015 Session] Relieve Court Clerks of the Responsibility of Responding to Requests for Bulk Criminal Records and Instead Redirect Individuals and Entities to the Texas Department of Public Safety (DPS) to Fulfill All Requests for Bulk Criminal Records

Policy Background:

After certain local, state, and federal agencies make criminal histories public, private entities profit from the sale and posting of mug shots and other criminal history information online. Open access to criminal records through government repositories and commercial vendors, combined with the rise of the Internet and the emergence of electronic databases, has enabled more than 40 million criminal background checks to be performed annually for non-criminal justice purposes.

As a result of this online expansion, individuals across Texas are frequently denied employment and housing based on criminal records that have been sold and published online, some of which never resulted in a conviction. Not only do these individuals suffer as a result of current policies that regulate the storage and dissemination of criminal records, but our workforce and families suffer as well. The widespread commercial publication of criminal records before a disposition is entered, as well as the long-term nature of data housed online, effectively prevents thousands of individuals from obtaining or keeping jobs and housing.

Texas policy-makers should create a standardized system for disseminating and providing updates to criminal records by authorizing DPS to be the sole agency that can disseminate bulk criminal records, and by requiring DPS to proactively ensure that private entities comply with updates to criminal records.

Note: This recommendation does not restrict access to public information; any person or entity may request information that is considered public, including criminal records.

Key Facts:

- In Texas, nearly 12 million individuals are included in the state criminal history records.^[1] These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, and those who have completed their sentences.
- The Texas Department of Public Safety reported in January 2013 that only 81% of Texas adult arrests in 2011 had a reported disposition.^[2] In other words, nearly 1 in 5 of all Texas criminal records do not include final dispositions. The inaccuracies that can result from disseminating records without final dispositions have allowed individuals to be denied employment and housing even without a criminal conviction.
- Multiple public agencies across Texas jurisdictions participate in disseminating criminal records to private entities in response to public information requests. These include, but may not be limited to:

- County and District Clerks
- Law enforcement agencies
- Texas Department of Public Safety (DPS)
- Community Justice Assistance Division, a division of the Texas Department of Criminal Justice (TDCJ)

The above agencies release criminal records to private entities in response to public information requests, but DPS is the only agency that provides updates to the private entities to which it releases records. Consequently, private entities that request criminal records from any agency other than DPS—whether from county and district courts, TDCJ, or elsewhere—are not routinely notified of updates reflecting orders of nondisclosure, expunction, or even final dispositions. Countless individuals are adversely affected by this practice that encourages the widespread dissemination of outdated and incorrect criminal records.

Relevant Bills:

- **Bill Number:** [HB 2700](#) (Thompson, Senfronia)
Bill Caption: Relating to the release of bulk criminal history record information by certain individuals and agencies.
TCJE Materials: [Fact Sheet](#) | [Testimony](#) | [CSHB 2700 Fact Sheet](#)
Hearing Notice: House Government Transparency & Operation Committee,

Notice of Public Hearing on April 8, 2015

Archived Hearing Video: House Government Transparency & Operation Committee, [04/08/15 Video](#) [TCJE testimony begins at 02:18:55]

- **Bill Number:** [SB 1874](#) (Whitmire)

Bill Caption: Relating to accessing criminal history record information and other records of involvement in the criminal justice system; authorizing fees; authorizing a civil penalty; creating criminal offenses.

- **Bill Number:** [SB 1960](#) (Hinojosa)

Bill Caption: Relating to the release of bulk criminal history record information by certain individuals and agencies.

TCJE Materials: [Fact Sheet](#)

Outside Publications:

- House Committee on Criminal Jurisprudence, [Interim Report to the 84th Legislature](#) [January 2015]

See *Charge 3*: Study the impact of SB 1289 (83R). Examine the sale of criminal histories that may be erroneous as well as the lasting impact that arrest records have on individuals who are arrested but not charged or convicted. Assess the need for revision of existing statutes and consider designating an agency responsible for regulating entities involved in the industry. (pages 21-26)

[1] Dennis A. DeBacco & Owen M. Greenspan, *Survey of State Criminal History Information Systems, 2012*, Table 1, Bureau of Justice Statistics, U.S. Department of Justice, 2014; <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. The number of individual offenders in the state criminal history file was 11,824,200.

[2] Texas Department of Public Safety, *Eleventh Report Examining Reporting Compliance to the Texas Computerized Criminal History System*, January 2013, p. 3; http://www.txdps.state.tx.us/administration/crime_records/pages/complianceRpt11.pdf