

# Bill Analysis: Senate Bill 915

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## Background and Purpose

Under current law, a court may order the sealing of records for juveniles adjudicated delinquent only on the application of the juvenile. Senate Bill 915 seeks to conserve judicial resources by putting this process in the hands of the court in certain cases, subject to prosecutorial objection, and consolidating the processes and hearings within the discretion of the court

Under the proposed change to the law, a juvenile court could independently seal records for youths adjudicated delinquent, or found to have engaged in conduct indicating a need for supervision, or taken into custody for either issue, only if:

- the youth is 16 or younger and two years have passed; or
  - the youth is 17 or older and final discharge or the last official action in the case occurred before the youth's 17th birthday;
- and
- the youth has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending seeking conviction or adjudication since either of those time periods but prior to the sealing order; and
  - the prosecuting attorney does not object.

The court must provide notice to the prosecuting attorney 30 days prior to sealing the records; upon any objection by the prosecuting attorney, the court shall hold a hearing on the issue.

Since those eligible would no longer be required to file a separate suit, which typically requires more than \$1,000 in legal costs, and a hearing would not be required unless the prosecutor objects, the proposed procedure promises to reduce costs both to citizens and, indirectly, to taxpayers who fund local courts.

This legislation would permit juvenile courts to continue to protect the public safety while significantly enhancing the opportunities for truly reformed juvenile offenders to move on with their lives and become productive, law-abiding citizens.

## Protecting the Public Safety

As noted earlier, a youth must have desisted from delinquency for a substantial period of time that varies based on the age of offense prior to any sealing of the record. In addition, current law that would remain in effect exempts any juveniles given a determinate sentence for violent or habitual felony offenses from eligibility for sealing records,<sup>1</sup> and limits the sealing of records of any felony offense to youths 19 and older who were adjudicated delinquent for the felony conduct before the age of 17.<sup>2</sup> No youth with a continuing obligation to register as a sex offender may seal their records.<sup>3</sup>

Finally, a prosecutor may request that the juvenile court unseal a juvenile record for the purpose of habitual felony offender sentencing as an adult.<sup>4</sup> This ensures that, in those cases when youths do not take advantage of the opportunity that sealing affords to chart a new course, they can once again be held properly accountable.

## Increasing Rehabilitation Opportunities

Unsealed records can significantly hinder outcomes for juveniles, including education, housing, and employment barriers,<sup>5</sup> as well as opportunities in the military. Some employers refuse to hire any applicant with even a criminal charge.<sup>6</sup> And even if hired, licensure opportunities can be diminished by a criminal record: in Texas, state statutes and regulations potentially bar ex-offenders from over 150 different licensed occupations from pest control to athletic training to plumbers to tow truck drivers.

Under Texas law, Section 58.106 of the Family Code<sup>7</sup> provides that juvenile justice information may be disseminated to a "person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code." Under Section 411.083 of the Government Code,<sup>8</sup> the state shall disseminate the information to:

- criminal justice agencies;
- noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information;
- the person who is the subject of the criminal history record information;

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- a person working on a research or statistical project for the state;
- an individual or an agency that has a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice;
- an individual or an agency that has a specific agreement with a noncriminal justice agency to provide services related to the use of criminal history record information disseminated under this subchapter;
- a county or district clerk's office; and
- the Office of Court Administration of the Texas Judicial System.

In practice, this often means that potential employers, college admission offices, and landlords can see unsealed records.<sup>9</sup> According to the Texas Attorney General, this includes public housing agencies.<sup>10</sup> In sum, there is wide dissemination of otherwise confidential information found in unsealed records.

In contrast, potential benefits of sealing records have been identified for both the offender and society including an incentive to desist from delinquent behavior or substance abuse, a way to avoid collateral consequences such as diminished employment or higher education opportunities, and judicial leverage to encourage desistance or aftercare even after the conclusion of judicial proceedings.<sup>11</sup>

In a random assignment study of first-time felony offenders in Ohio,\* a comparison between groups of offenders with no

statistically significant demographic differences who were all eligible to seal their records, which some did and some did not seek, demonstrated that sealed records were related to increased employment, decreased drug use, and decreased recidivism:

- After 24 months, 61 percent of offenders who sealed their records were employed, versus 35 percent of offenders who did not seal their records. After 36 months, 58 percent of those with a sealed record were employed versus 39 percent of those without a sealed record.
- After 24 months, only 30 percent of those with a sealed record abused substances, compared to 61 percent with an unsealed record.
- After three years, 31 percent of those with a sealed record were rearrested, versus 56 percent of those with an unsealed record.<sup>12</sup>

## Conclusion

Former U.S. Attorney General Edwin Meese stated that the purpose of sealing juvenile records was to “protect the person who had committed minor offenses and then had gone on to live a blameless life so that at age 18 when they went out for a job they did not have to talk about having been arrested for a juvenile offense...”<sup>13</sup> Targeted sealing of juvenile records in Texas, while providing for prosecutorial objection, serves exactly that purpose. ★

\* This study concentrated on adult offenders; a comprehensive study of juvenile offenders with sealed records has not yet been undertaken.

<sup>1</sup> Tex. Fam. Code Ann. § 58.003(b).

<sup>2</sup> Tex. Fam. Code Ann. § 58.003(c).

<sup>3</sup> Tex. Fam. Code Ann. § 58.003(n).

<sup>4</sup> Tex. Fam. Code Ann. § 58.003(k).

<sup>5</sup> Robert E. Shepherd, “Collateral Consequences of Juvenile Proceedings: Part II,” *Criminal Justice Magazine*, Vol. 15 Issue 3.

<sup>6</sup> Ryan D. Watsein, “Out of Jail and Out of Luck: The Effect of Negligent Hiring Liability and the Criminal Record Revolution on an Ex-Offender’s Employment Prospects,” *Florida Law Review* 61 (2010): 594.

<sup>7</sup> Tex. Fam. Code Ann. § 58.106.

<sup>8</sup> Tex. Gov’t Code Ann. § 411.083.

<sup>9</sup> “Sealing Juvenile Court Records in Texas,” Texas Foster Youth Justice Project (2009).

<sup>10</sup> Office of the Attorney General, State of Texas, Open Records Decision No. 655 (16 July 1997).

<sup>11</sup> David Festinger et al, “Expungement of Arrest Records in Drug Court: Do Clients Know What They’re Missing?” *Drug Court Review*, 1 no. 1.

<sup>12</sup> Michael James Chaple, “Pretrial Diversion & Record Sealing: A Promising Approach to Reduce Recidivism among Substance Abusing Offenders,” Dissertation submitted to the Graduate School-Newark Rutgers, The State University of New Jersey (2011).

<sup>13</sup> Edwin Meese III, Luncheon Speaker, *Pepperdine Law Review* 23, no. 3 (1996): 800.

