

## **What is the Elected Officials' Role in Assisting Employment for Ex-Offenders?**

*on behalf of the*

*Texas Association of Black City Council Members*

*presented by the*

*Office of State Senator Royce West*

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### ***How are Ex-Offenders impacted by –***

- legal constraints ?
- licensing restrictions ?
- hiring practices ?
- use of background checks ?
- criminal history records ?

## ***Provisions in Law to help Ex-Offenders***

- Federal law
- State law
- Local ordinances

## ***How are Ex-Offenders impacted by the law?***

Although state law does not specifically determine private sector hiring practices, numerous sections of state code prohibit convicted felons from obtaining professional licenses.

### ***Examples:***

- Law enforcement / public safety
- Public Education
- Financial services
- Health professions

### ***How are Ex-Offenders impacted by the law?***

**However** - Texas law allows public access to criminal history records and a criminal conviction is a permanent entry on the criminal history record of an offender.

### ***How are Ex-Offenders impacted by the law?***

In Texas, when a person is convicted of a criminal offense that is a **Class B Misdemeanor** or **greater**, that person has a permanent entry on a criminal history record that cannot be removed (expunged) unless the conviction is later overturned or that person receives a pardon.

## ***How are Ex-Offenders impacted by the law?***

### ***Know also that -***

Even if you have not been convicted of a crime, but were arrested for an alleged offense - the records of that arrest are public and can be obtained by employers or background check companies.

## ***How are Ex-Offenders impacted by the law?***

### ***Deferred adjudication -***

Although a person who has successfully completed a sentence where they received deferred adjudication does not have a conviction, those records still appear on a criminal history records search (background check).

***However,*** some records can be sealed through an Order of Non-Disclosure.

## **Provisions in Law to help Ex-Offenders**

### **Federal law -**

Under federal law, ex-offenders are not a protected class for employment considerations.

### **According to the EEOC:**

*"While Title VII does not prohibit an employer from requiring applicants or employees to provide information about arrests, convictions or incarceration, it is unlawful to discriminate in employment based on race, color, national origin, religion, or sex."*

## **Provisions in Law to help Ex-Offenders**

### **Federal law -**

But under federal law, discrimination based on a person's criminal history is illegal Under Title VII (Civil Rights Act of 1964) if it can be proven that **"disparate treatment"** took place or that the employer's actions had a **"disparate impact"** on the ex-offender.

## **Provisions in Law to help Ex-Offenders**

### ***State law -- Chapter 53 Texas Occupations Code***

Texas law provides conditions for a person who has a criminal conviction to hold an occupational license.

In considering the application of a person who has a criminal conviction, a licensing authority may consider factors such as:

- the nature and seriousness of the crime
- the relationship of the crime to the duties of the occupation
- the extent to which a license may offer an opportunity to engage in further criminal activity of the same type...

## **Provisions in Law to help Ex-Offenders**

### ***State law -- Chapter 53 Texas Occupations Code***

#### ***Additional factors -***

- the extent and nature of the person's past criminal activity
- the age of the person when the crime was committed
- the amount of time that has elapsed since the person's last criminal activity
- evidence of the person's rehabilitative efforts while incarcerated or after release

## **Provisions in Law to help Ex-Offenders**

### **Texas Occupations Code (SB653 - 80R)**

Under state law, a licensing agency may issue a provisional license for a term of six months to a person who has been convicted of a criminal offense.

Those provisional conditions expire and a "regular" license can be issued after that time if the applicant does not:

- commit a new offense
- have his probation or parole revoked
- violate the law or rules that govern the occupation for which the provisional license was issued

## **Provisions in Law to help Ex-Offenders**

### **Deferred adjudication -**

Under Texas law, the records of some felony and misdemeanor offenses can be sealed from public disclosure through an - **Order of Non-Disclosure.**

Under this order, general public access is sealed, but the records are available to law enforcement, the courts, school districts and some state agencies.

## ***Provisions in Law to help Ex-Offenders***

### ***Deferred adjudication - SB 144 by Sen. West***

Under this new law, the records of the offense where a person received and successfully completed deferred adjudication are eligible to be expunged.

#### ***Law requires:***

- 10 years to have expired after completion of probation
- a favorable recommendation by the Board of Pardons & Paroles
- a pardon by the Governor

## ***Public and Private Sector hiring practices***

### ***The State of Texas - Application for Employment***

Have you ever been convicted of a felony or subjected to deferred adjudication on a felony charge?

If your answer is yes, explain in concise detail on a separate page, giving dates and nature of offense, name and location of the court, and disposition of the case(s).

A conviction may not disqualify you, but a false statement will.

***Note: Some state agencies may require additional information related to convictions of misdemeanors.***



## ***Public and Private Sector hiring practices***

### ***City of Dallas -***

In 2004, the City updated its policy on hiring persons who have a criminal history record. Factors such as time since the conviction, nature of the offense and how the offense is related to the job are considered.

## ***Public and Private Sector hiring practices***

### ***City of Dallas (cont'd) -***

#### ***An applicant can be considered for employment if:***

- there are no pending criminal offenses (except minor traffic offenses).
- all requirements for a person who received deferred adjudication are completed.
- they are currently on deferred adjudication for certain less serious misdemeanor offenses.
- 10 yrs. have passed following a felony conviction for certain offenses.
- 5 yrs. have passed for certain felony convictions if the defendant was under age 21.

## **Public and Private Sector hiring practices**

*Tom Thumb, Randall's, Safeway*

Have you ever been convicted of a felony or received deferred adjudication for a felony charge?

Are you currently participating in a Work Release Program, Halfway House or Transition Center?

Were you convicted or released from prison within the past year?

Was this a Federal or State conviction?

- Conviction month/year
- Release month/year

## **What else can Cities do?**

Job training

Employer incentives

- Federal fidelity bonding
- WOTC Tax Credit

## Sources:

Equal Employment Opportunity Commission (EEOC)  
*Guidance on Employer Use of Arrest and Conviction Records 4/25/12*

U.S. Department of Labor

Texas Code of Criminal Procedure  
*Chapter 55.01*

Texas Occupations Code  
*Chapter 53*

Texas Government Code  
*Chapter 411, Chapter 552*

Texas Workforce Commission

City of Dallas