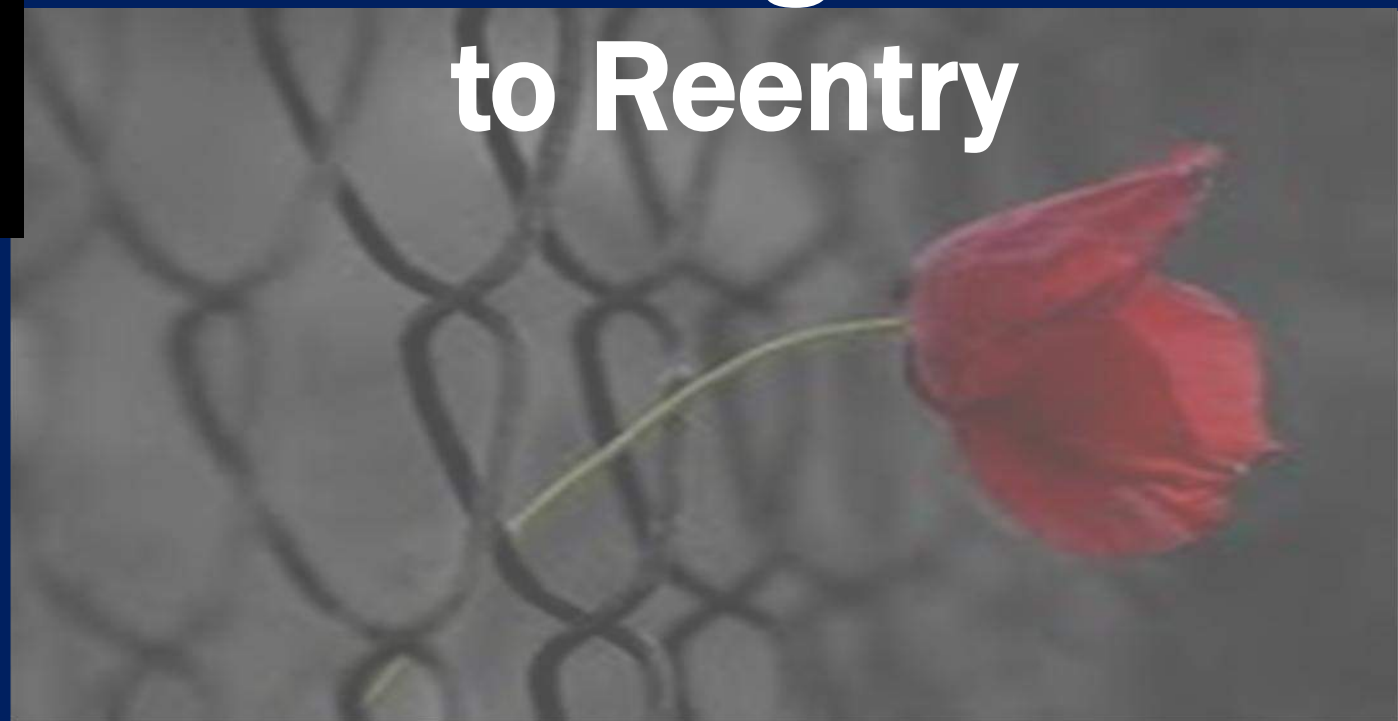


Texas RioGrande Legal Aid 2012



# LOCKED OUT

## A Texas Legal Guide to Reentry



# **LOCKED OUT:**

## **A Texas Legal Guide to Reentry**

Last Revised November 2012

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## Acknowledgments

**Locked Out: A Texas Legal Guide to Reentry** is a project of Texas RioGrande Legal Aid and Texas C-BAR (Community Building with Attorney Resources).

This Guide is intended to assist advocates and others who help people experiencing the often difficult transition from incarceration to mainstream society. It summarizes a few of the most burdensome legal obstacles caused by a criminal record and provides guidance on how to effectively manage these barriers to reentry. The resources referenced in this Guide are publicly available and can be accessed from any public library that offers internet service.

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### ***Legal Materials Disclaimer***

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## Introduction

The United States has the highest documented incarceration rate in the world, housing nearly one-quarter of the world's prisoners.<sup>1</sup> Nearly one in every 100 adults in the United States is behind bars. When probation and parole are included, the number of adults under some form of correction supervision rises to one in 31.<sup>2</sup>

In Texas, one in 22 adults are under some form of correctional supervision: in prison, in jail, on probation or on parole.<sup>3</sup> On any given day, Texas' massive state corrections system houses a daily average of 155,000 inmates in 114 state correctional facilities. Texas' 246 county lockups house an additional 41,000 prisoners each day.<sup>4</sup> Over half of the people (63%) in the county jails are not serving a sentence and are being detained for other reasons.<sup>5</sup> There are nearly four times as many prisons and jails in Texas (360) as there are university campuses statewide (94).

Out of a corrections budget of around \$3 billion, Texas pays an estimated \$16,000 to \$21,000 a year to house a single prisoner,<sup>6</sup> well above federal poverty threshold of \$11,170 for annually for a single-member household.<sup>7</sup>

In 2007, the Texas legislature dedicated \$241 million of the corrections budget to create residential and community-based treatment and diversion programs.<sup>8</sup> Other reforms afforded courts more sentencing options for new offenders that permitted non prison-based sanctions for parole violations. In recent years, more inmates have been granted parole and for shorter terms.<sup>9</sup> Fewer people are returning to prison for minor infractions and are suffering fewer sanctions for violating conditions of release.<sup>10</sup>

A positive trend is emerging. A 2010 study noted that for the first time since 1972, the number of people released from prisons in the United States exceeded those admitted.<sup>11</sup> Texas has not experienced a similar decline in numbers; however, Texas' rate of incarceration has declined in recent years.<sup>12</sup> Texas releases between 70-75,000 felons each year; half to straight release without supervision, the remainder to parole. The drop in the rate of incarceration has effectively swelled the ranks of ex-offenders that are now trying to navigate multiple roadblocks to reentry.

The newly released are expected to return to their communities, contribute to the tax base and participate constructively in society. For many, successful reentry - meaningful participation in society – remains a myth. All too often, people with a criminal record find

themselves locked out of employment, shelter, public benefits, access to health care – everything that might contribute to a successful transition into society. Outmoded laws and policies continue to penalize people who have served time.

Collateral consequences of criminal convictions continue to thwart the efforts of individuals to join society. In recent years, legal initiatives to remove or lessen the impact of these collateral consequences have been gaining momentum on both state and federal levels.<sup>13</sup>

This publication addresses some of the current barriers faced by previously incarcerated people.<sup>14</sup> It is intended to be a resource guide for advocates that assist previously incarcerated people who find themselves locked out of meaningful participation in society.

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# 1. Identification

Unlike many countries, America has no true national identity card and no federal mandate that each citizen carry one. Valid proof of identity can be the key that unlocks the doors to housing, employment, education, medical care, benefits, transportation, driving privileges, voting, banking and other financial transactions, vocational and professional licensure -- in short, all services an individual requires to fully participate in society.

For individuals recently released from incarceration, key identification documents can be difficult to acquire because each may require proof of the other. For example, a certified copy of a birth certificate is may be required to get a driver's license. A copy of a valid photo ID (usually a driver's license) may be needed to order a certified copy of a birth certificate. , driver's license or state identity card, and a social security card. Of these, a driver's license or state ID is the most widely accepted form of identification. This section provides information on how to obtain a Texas driver's license, commercial driver's license and Texas identity card, as well as other important proofs of identity, including a certified copy of a birth certificate, social security card, and a passport.

## Legal Name

Valid identification must include a "legal" name. A nickname is not a legal name. A legal name is the name given at birth that appears on a person's birth certificate. With the exception of marriage, an adult cannot change his or her legal name without a court order.<sup>15</sup> A person newly released from prison may not have any item of identification except their prison identification card. Others may have identification that conflicts with the name that appears on their birth certificate, which can create problems when applying for a driver's license or state identity card.

Accurate proof of identity is required in order to obtain a state-issued driver's license or identity card. In addition to being the most commonly accepted form of identification; a valid state-issued ID *must be carried* by anyone released to parole or mandatory supervision as a condition of release. According to the Texas Board of Pardons and Paroles, this requirement is to be "strictly enforced."<sup>16</sup>

## Driver’s License or Identity Card

In Texas, the Texas Department of Public Safety (DPS) is the state agency responsible for issuing driver’s licenses and identification cards.

### *Status of License*

The application process depends upon the current status of the license: unexpired, expired less than two years ago, expired more than two years ago, or never applied.

<b>Unexpired DL or ID</b>	<b>DL or ID Expired less than 2 years</b>	<b>No DL or ID, or expired over 2 years</b>
Must notify DPS of change of address within 30 days of the change.	If expired less than two years before the application, the expired driver’s license or ID card may be used as proof of identity to renew.	If license or ID expired over two years before applying, must complete new application and proofs of identity accepted by acceptable to DPS.

### *Expired License*

Note that an expired Texas driver’s license can be used as primary ID without the necessity of other documents IF it expired less than two years before the application date. An expired driver’s license or identity card from a state other than Texas is useful only as supporting documentation.

### *Securing ID Prior to Release*

As a result of 2009 legislation, TDCJ is required to obtain electronic verification of the prisoner’s birth record from the Department of Health and Human Services (DHHS). Once verified, TDCJ is to forward the information to DPS along with a request to issue a legal identification card for the inmate prisoner, who can be charged for the actual cost.<sup>17</sup> The law, to be implemented through the Texas Department of Criminal Justice Reentry and Reintegration Division’s (RID) Program, can help an inmate secure ID in the following situations:

- If an offender’s driver license is eligible for renewal after release, they will be sent a letter noting their eligibility status. An application for a birth certificate will not be completed for them since the driver license is eligible for renewal.
- If the driver license is not eligible for renewal due to expiration or infraction issues, a birth certificate application will be prepared and submitted. If the offender was born in Texas, the agency will cover the cost of the birth certificate. For offenders born outside of Texas, the offender or family will be responsible for covering the cost.

- An application for a replacement social security card will be prepared and submitted for any offender meeting the eligibility criteria.
- For offenders who will be released with no supervision requirements, a state jail or flat discharge, the identification documents will be provided to the offender at time of release from incarceration. Offenders being released on supervision will receive their documents during their initial visit with a parole officer.<sup>18</sup>

Implementation of this program is in its early stages.

*Proof of Identity*

Each applicant must submit proof of identity accepted by DPS before a license or photo ID may be issued. DPS categorizes acceptable proof of identity as “primary”, “secondary”, or “supporting”. The applicant who lacks “primary” identification must submit either two items of “secondary” identification or one secondary and at least two other “supporting” proofs of identification. The following chart lists the items currently accepted by DPS as proof of identity required to obtain Texas driver’s license or Texas identity card:

**Table - Proof of Identity Documents Accepted by DPS**

<b>PRIMARY</b>	<b>SECONDARY</b>	<b>SUPPORTING</b>
<b>MUST INCLUDE PHOTO, FULL NAME AND DOB</b>	<b>RECORDED US GOVERNMENTAL DOCUMENTS (INCLUDES NAME &amp; DOB)</b>	<b>ADDITIONAL RECORDS AND DOCUMENTS THAT AID IN ESTABLISHING IDENTITY</b>
<b>Accepted for Identification without additional documentation</b>	<b>Applicant must present one secondary and two supporting or two secondary documents to establish identity</b>	
<ul style="list-style-type: none"> <li>• Texas driver license (DL) or identification certificate (ID) with photo and within two years of expiration date</li> <li>• Unexpired United States passport book or passport card</li> <li>• United States Citizenship Certificate or Certificate of Naturalization with identifiable photo (N-560, N-561, N-645, N-550, N-55G, N-570 or N-578)</li> <li>• Unexpired DHS or USCIS document with verifiable data and identifiable photo</li> <li>• <u>Examples:</u> US Citizen Identification Card (I-179 or I-197); Permanent Resident Card (“Green Card” I-551) Temporary</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Original or certified copy of a birth certificate issued by the appropriate State Bureau of Vital Statistics or equivalent agency from a U.S. state, U.S. territory, the District of Columbia, or a Canadian province.</b></li> <li>• <b>A birth record issued by a hospital is not acceptable under this category.</b></li> <li>• <b>Original or certified copy of U.S. Dept. of State Certification of Birth Abroad (issued to U. S. citizens born abroad) (Form FS-240, DS-1350, or FS-545)</b></li> <li>• <b>Original or certified copy</b></li> </ul>	<ul style="list-style-type: none"> <li>• School records</li> <li>• Insurance policy (valid continuously for the past two years)</li> <li>• Vehicle title</li> <li>• Military records</li> <li>• Unexpired military dependent identification card (actual card)</li> <li>• Original or certified copy of marriage license or divorce decree</li> <li>• Voter registration card (actual card)</li> <li>• Social Security card (actual card)</li> <li>• Pilot’s license (actual card)</li> </ul>

<p>I-551 (immigrant visa endorsed with stamp) and foreign passport; Temporary Resident Identification Card (I-688); Employment Authorization Card (I-766); U.S. Travel Document (I-327 or I-571); Advance Parole Document (I-512 or I-512L); I-94 stamped § 208 Asylee with photo; I-94 stamped §. 207; Refugee with photo; American Indian Card (I-872); Foreign Passport, visa (valid or expired), and Form I-94 with an undefined expiration date (e.g., duration of status); Foreign Passport, visa (valid or expired) and Form I-94 with defined expiration; Unexpired US Military ID card active duty, reserve, or retired personnel with photo.</p>	<p><b>of court order with name and date of birth (DOB) indicating an official change of name and/or gender from a U.S. state, U.S. territory, the District of Columbia, or Canadian province.</b></p>	<ul style="list-style-type: none"> <li>• Concealed handgun license (actual card)</li> <li>• Texas Driver License or ID temporary receipt (actual receipt)</li> <li>• Expired DL or ID issued by another state, territory, District of Columbia or Canadian province within two years of the expiration date (actual card)</li> <li>• A foreign passport (actual document)</li> <li>• A consular document issued by a state or national government (actual document)</li> <li>• <i>Texas Inmate ID card (Actual Card)</i></li> </ul> <p>LIST IS NOT EXCLUSIVE; DPS may accept other forms of supporting documentation.</p>
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### Texas Inmate ID Card

A Texas Inmate ID Card falls within the “supporting” classification of items that may be used to establish proof of identity for the purpose of obtaining a Texas driver’s license or identity card. The card is not considered reliable proof of identity because it reflects the name given at the time of arrest, which may not match the inmate’s legal name. Documents that fall within the “supporting” category cannot be used as proof of identity unless accompanied by another “supporting” item plus one “secondary” item (usually a birth certificate).

### Green Card

A Green Card holder (permanent resident) is someone who has been granted authorization to live and work in the United States on a permanent basis. The government designation for a permanent resident card is US Customs and Immigration Services Form I-551. A valid permanent resident card is primary identification, and is therefore the only proof of identity that DPS requires for a Texas driver’s license.

### Out of State License

A person holding an unexpired driver’s license from another state must apply for a Texas driver’s license within 90 days of arrival in Texas by appearing in person at a [Texas Driver](#)

[License office](#). If the out-of-state license is valid and unexpired, the applicant must surrender it to DPS in order to get a Texas Driver's license. A written test or driving test is not required; only vision will be tested. If the license from another state is expired, the person must produce other acceptable forms of ID (see chart above), surrender the expired license, and pass the written, driving and vision exams.

#### *New ID or Expired Over 2 Years*

DPS provides the following instructions for first time applicants and for those whose Texas license expired more than two years from the date of application:<sup>19</sup>

1. Apply in person at a [Texas driver license office](#).
2. Present [documents that verify your identity](#).
3. Present documents that verify you are a [U.S. citizen or have lawful presence](#). The information on each document **must match**. Additional documentation may be required to verify conflicting information, incomplete names, and date of birth.
4. Present [proof of Social Security Number](#). If you do not have a Social Security Number, you must complete a Social Security Affidavit form available at the [driver license office](#).
5. Present proof of your [Texas residency](#).
6. Present proof of Texas vehicle registration and liability insurance on all vehicles you own.
7. Complete the [application for driver license or identification card \(PDF\)](#). You may type your information on the form, print it, and bring it with you to the office. If you don't have a printer, the form is also available at the office.
8. Consent to be photographed, fingerprinted, and provide your signature at the time of application.
9. Pass the written, driving, and vision examinations. (Read more about [foreign language examinations](#).)
10. Pay the [required fee](#) with a credit card, cash, money order, or a non-temporary check.
11. Provide a vehicle for the driving exam and present current liability insurance, Texas vehicle registration, and inspection for the vehicle.

#### *"In Person" Requirement*

New applicants, or those whose Texas driver's license or ID expired more than two years from the date of application must apply in person at a DPS office to be photographed. This requirement can present enormous challenges to formerly incarcerated people. Almost a third of Texas' 254 counties do not have a DPS office.<sup>20</sup> Of those that do, less than a fourth has extended hours and none are open on weekends.<sup>21</sup> In a state as large as Texas, ex-offenders with limited access to transportation, who must travel a long distance to get to an office, or are unable to appear at DPS during hours of operation may find appearing in person at DPS more difficult than expected.



### *Applicants Under Supervision*

Parolees who need a license but reside in a county without a DPS office must violate one term of release to comply with another. The Texas Board of Pardons and Paroles “strictly enforces”<sup>22</sup> the requirement that those released to parole or mandatory supervision carry a valid state-issued ID, but to get to the nearest DPS office may violate geographic and travel restrictions. If on parole, the applicant is required to carry DPS-issued photo ID while under supervision. If the parolee resides in a county that lacks a DPS office, he may not be able to travel to a county that does.

### *Proof of Social Security Number*

Every applicant for a driver’s license or commercial driver’s license must submit proof of a social security number (SSN). Proof of a SSN is *not* required to obtain a Texas ID card; only a driver’s license. The SSN will remain a part of the driver’s record, and later applications for a duplicate license or license renewal will be verified against the SSN on file. If DPS cannot verify the SSN, it can deny issuance or renewal.

If an SSN has never been assigned, the applicant must complete a Social Security Affidavit (DL-13) provide by DPS and swear to it before a DPS officer. Non-U.S. citizens will need to submit proof of lawful status in the country for a period longer than six months.

### *Proof of Lawful Presence*

DPS requires applicants who are not U.S. citizens, U.S. nationals, lawful permanent residents, refugees, or asylees to present proof of lawful presence in the U.S. before being issued an original, renewal, or duplicate Texas driver license or identification card. Border Crossing cards alone are *not* accepted by DPS for the purpose of establishing a lawful temporary admission. Proof of lawful presence includes documentation issued by the:

- U.S. Dept. of Justice,
- U.S. Dept. of State,
- U.S. Dept. of Homeland Security, or
- U.S. Citizenship and Immigration Services.

The document(s) must show *lawful temporary admission* to the U.S. For a list of acceptable documents, see DPS’s [Temporary Visitor Issuance Guide \(PDF\)](#).

If proof of lawful presence is verified, DPS will issue a license or ID with a “Limited Term” designation that will expire when the period of lawful presence (as shown in the

accepted document) expires. If the applicant's lawful presence is indefinite, driver licenses and IDs must be renewed every year.

The holder of a temporary visitor card must provide documents to update the driver license or ID within 45 days after the visitor status date expires. Failure to do so will result in cancellation of the card and a ban on driving. *Exemption for Disabled Veterans*

A Texas driver license or ID card may be provided free of charge to a veteran of the United States Armed Forces if the veteran meets the following criteria:

1. Was honorably discharged,
2. Has a service-related disability of at least 60 percent
3. Receives compensation from the United States because of the disability, and
4. Is not subject to sex offender registration requirements

The driver license fee exemption *does not apply* to commercial driver licenses.

For guidance on how to apply, please refer to

### **Appendix A: Steps to Obtain a Texas Driver's License or Identity Card.**

#### **Commercial Driver's Licenses (CDL)**

Texas law does not allow residents of Texas to drive commercial vehicles with a personal driver's license. Residents who want to become commercial drivers must have a commercial driver's license, or CDL.

##### *Eligibility for CDL*

To get a commercial driver's license, the applicant must be:

- At least 21 years old
- Be domiciled in Texas. A "domicile" is a true, fixed, and permanent home.
- Have a regular driver's license that is at least one year old
- Pass a commercial driver's license test.

All applicants whose driver's license is currently suspended, cancelled, or revoked in Texas or any other state are not eligible for a commercial driver license (CDL). Domicile can be proved by showing two acceptable documents with name and proof of domicile.<sup>23</sup> The applicant who cannot provide documents with proof of domicile may complete a [Texas Residency Affidavit](#).

##### *Application Requirements for CDL*

All first time applicants and applicants who previously held a Texas CDL that has since expired must:

1. Apply in person at a [Texas Driver License office](#).

2. Present documents verifying [Identity](#). Different documents are required if you are a [U.S. citizen](#) or have [Lawful Presence](#). The information on each document presented **must match**. Additional documentation may be required to verify conflicting information, incomplete names and date of birth.
3. Present [proof of Social Security Number](#). A CDL cannot be issued without a social security number.
4. Meet the [medical certification requirement](#).
5. Meet the [non-resident requirements](#) if you are not a Texas resident.
6. Present proof of Texas vehicle registration and liability insurance on all vehicles you own.
7. Complete the [Commercial Driver License application \(PDF\)](#).
8. Consent to be photographed, fingerprinted, and provide your signature at the time of application.
9. Pass the vision exam.
10. Pass the required written test for type of license you desire, including endorsements, A & B rules test (written), and skill tests in the appropriate vehicle (driving).
11. Complete the [Hazardous Material Endorsement Procedures](#).
12. Pay the [required fee](#) with a credit card, cash, money order, or a non-temporary check.
13. Provide a commercial motor vehicle for the driving exam, and present current liability insurance, Texas vehicle registration, and inspection for the vehicle.

There are additional requirements for school bus [school bus](#) drivers.

#### *CDL from another State*

A new Texas resident who has a CDL from another state has 30 days to get a Texas

CDL. The applicant must:

1. Complete the requirements for an original CDL applicant. (see requirements listed above).
2. Surrender the VALID out-of-state CDL at the driver license office. The written and driving examinations are waived, but the applicant must still pass a vision exam.  
OR
3. Surrender an EXPIRED CDL at the driver license office. In the case of an expired CDL, the applicant must pass the written, driving and vision exams.

#### *Nonresident CDL - Requirements*

A non-resident can obtain a nonresident commercial driver's license (CDL) with proof of a valid social security number. If the applicant does not have a social security number, DPS can issue a temporary non-resident CDL. For a nonresident commercial driver's license, the applicant must:

- Meet all [CDL requirements](#).
- Be a resident of a country whose licensing standards do not meet standards established by US law.<sup>24</sup> (Applicants from Mexico or Canada are ineligible).

Present the following:

- A valid social security number.
  - A valid passport issued to the applicant by the country of which the applicant is a resident.
  - A valid temporary worker visa.
  - A valid Form I-94 Arrival/Departure record, or a successor document.
  - Pay a fee of \$121.00.
- Expiration - A non-resident CDL must expire on the earlier of:
    - The expiration date of the visa.
    - The expiration date of the Form I-94 Arrival/Departure record, or a successor document.

**Table: Driver’s License, Identification Card and CDL Fees<sup>25</sup>**

<b>Driver’s License and Identity Card</b>	<b>Fee</b>	<b>Information</b>
Driver’s License 18 and older	\$25	Expiration 6 years
Driver’s license Renewal	\$25	Expiration 6 years
Driver’s license examination	\$11	Does not affect current expiration date
DL/CDL or ID renewal for registered sex offenders (Tex. Code Crim. P Ch. 62)	\$21	Annually
Original Commercial Driver’s License (CDL)	\$61	Expiration 5 years
Original Nonresident CDL	\$121	Expires on the earlier of the expiration date of the visa presented or the expiration date of the Form I-94 or a successor document
Original Temporary Non-Resident CDL	\$21	Expires on the earlier of the 60th day after the date the license is issued, the expiration date of the visa presented or the expiration date of the Form I-94 or a successor document
CDL Renewal	\$61	Expiration 5 years
CDL Examination, Duplicate	\$11	Does not affect current expiration date
Original / Renewal ID Card	\$16	Expiration 6 years
Under age 60	\$6	Indefinite expiration
60+		
ID Duplicates	\$11	Does not affect current expiration date
Occupational License (Essential need)	\$10	All reinstatement fees must be paid prior to issuance. (Occupational may be issued up to 2 yrs. at \$10.00 per year).
Restricted Interlock License	\$10	All reinstatement fees must be paid prior to issuance

## Birth Certificates

A birth certificate is a key form of proof of identity accepted by DPS. People without a “primary” form of identification must submit two “secondary” forms, or one secondary and two “supporting” forms of identification. The “secondary” category is limited to government-issued documents proving that the applicant was born in a U.S. state, territory, the District of Columbia, or a Canadian province, (birth certificate); a U.S. Department of State certificate of birth abroad (born abroad to parents who are citizens), or a certified copy of a court order showing a change of name.

A Texas birth certificate can be ordered online, by mail, or in person. If ordered online or in person, the cost is \$22. If ordering by mail, add \$8 for certified delivery.

### *Information Required for Certified Copy*

The following information is required of all applicants for certified copy of a Texas birth certificate:

- Full name of the individual on the Birth Certificate
- Date of birth
- City or county where the birth took place
- Full name of the father on the Birth Certificate (if listed)
- Full maiden name of the mother on the Birth Certificate, (if listed)

### *Ordering a Certified Copy of Birth Certificate*

#### Ordering Online

Applicants who have a valid state-issued driver’s license or government issued ID card can order a certified copy of their birth certificate online through the portal [TexasOnline](#), the official eGovernment site for the State of Texas. An applicant who resides in Texas can order his or her own record or the records of immediate family members. A person who resides outside of Texas can order his or her own record, or the record of child, if the person is listed as a parent on the child’s record. For online ordering, the applicant must have a:

- Current driver’s license or state-issued identification card *and*
- Social Security number
- 

The order will take estimated 10-15 business days to process.

### Ordering by Mail

For applicants who do not have a current state-issued ID, a certified copy can be ordered by mail. To order a birth certificate by mail, the applicant must:

1. Complete an application for a certified copy of a birth certificate, available from the [Texas Bureau of Vital Statistics](#) (BVS).
2. Include copy of a photo ID. Acceptable photo ID can be a:
  - Texas inmate card or prison ID
  - State-issued driver's license
  - State/city/county ID card
  - Student ID
  - Government employment badge or card
  - Military ID
  -

If the applicant does not have a photo ID, the applicant may:

- send a copy of the photo ID of an immediate family member, or
- send copies of two documents showing applicant's name (examples: utility bill and Social Security card).
- One of the documents must have applicant's signature.

Mail the application with photocopy of ID and \$30 check or money order for payment. BVS cannot process the application for birth certificate without a photo ID or the alternate IDs listed above.

### Ordering in Person

The application can be made in person at BVS offices in Austin, Texas, 1100 W. 49<sup>th</sup> St., Monday through Friday, 8:00 am - 5:00 pm. Proof of ID is required

### Table: BVS Order Information

Additional ordering information is listed in the table below (from BVS website):

Offline application methods	Instructions	Cost	Payment methods accepted	Processing time for most requests
In person at the Texas Vital Statistics Office in Austin	Appear in person at 1100 West 49th St, Austin, TX 78756 Monday-Friday, 8 am - 5 pm	\$22–Certified copy \$60– <a href="#">Heirloom</a>	Cash Check Money order	Short form birth certificates - - 30 minutes to 2 hours. Long form birth certificates - may take several days to process.

Expedited - express mail Send orders to Texas Vital Statistics through overnight mail (Fedex, Lone Star, UPS, etc.) NOT USPS Priority Mail.	<a href="#">Application-pdf (28K)</a>	\$22-Certified copy \$60- <a href="#">Heirloom</a> + \$5 if expedited; + \$8 return delivery cost for Lonestar or \$18.50 express mail	Check or Money order	10-15 business days <u>Please note:</u> this estimate applies only to complete and acceptable applications. Incomplete or unacceptable applications will require additional processing time.
U.S. Postal Service regular mail	<a href="#">Application-Word (58K)</a> <a href="#">Application-pdf (28K)</a>	\$22-Certified copy \$60- <a href="#">Heirloom</a> + return delivery cost of \$8 for UPS or \$18.50 express mail (optional)	Check or Money order	6-8 weeks

*Birth Certificate from Another State*

Each state has its own agency or office that retains birth records. Contact and ordering information for birth certificates for all 50 states may be found on the Center for Disease Control's [state-by-state list](#).

*Amending or Correcting Birth Certificate*

If the name on a person's birth certificate needs to be corrected because it is inaccurate or does not conform with other forms of identification, the person can file an amendment or correction with the Texas Bureau of Vital Statistics (BVS). The application to amend or correct a Texas birth certificate can be found [here](#).

Every application to amend must include:

- An affidavit from the person(s) specified; and
- One or more of listed documents accepted by BVS.

The form for the affidavit is included in the application to amend.

**Table: Requirements to Amend or Correct Birth Certificate**

The table below lists the source of affidavits and list of required documents:

TYPE OF CHANGE	AFFIDAVIT	DOCUMENTS
<i>Adding Information</i>	children 17 and under - affidavit signed by both parents	document must show the correct information re: item(s) to be corrected

(Items left blank on original certificate)	adults, 18 and over affidavit by older relative	<ul style="list-style-type: none"> <li>• Hospital record of birth</li> <li>• Baptismal certificate</li> <li>• School record (must be signed by custodian of school records based on earliest attendance)</li> <li>• Birth certificate of older brother or sister</li> <li>• Insurance policy application</li> <li>• Armed forces discharge papers</li> <li>• Social security application (official transcript issued by Social Security administration, Department of Health, Education, and Welfare,</li> <li>• Record of immigration from Immigration and Naturalization Service, US Department of Justice</li> <li>• Passport</li> <li>• Marriage record of parents (copy of certificate, license, or application, whichever supplies the required facts)</li> <li>• Birth or death certificate of registrant's parents</li> <li>• Divorce decree</li> <li>• Judicial actions (certified copy of any court action affecting information shown on birth certificate.</li> </ul>
<i>Corrections in Spelling</i> (Names having the same sound)	affidavit by parent(s) or older relative	
<i>First or Middle Name</i> (change or add)	affidavit and one document	
<i>Significant Change in Last Name</i>	a certified court order	
<i>Sex</i>	certification by medical attendant or affidavit and one document	
<i>Name of Father</i>	a paternity determination; application to amend <i>cannot</i> be used to add father's name; contact BVS	

For step by step instructions on how to order a birth certificate, please review:

**Appendix B: Steps to Obtain Certified Copy of Texas Birth Certificate**

**Social Security Identification**

Although not initially intended to serve this purpose, a social security number has become another important form of identification. Most of the time, the cardholder need only know his or her own social security number without providing proof of the actual card.

*Original Social Security Card*

To apply for an original or replacement social security card for a U.S. born citizen, the Social Security Administration requires supporting evidence of identification.

**Table: SSA Proof of Identity**

Evidence of Age	Birth certificate - If no birth certificate, may accept another document showing age, such as:
-----------------	--



	<ul style="list-style-type: none"> <li>• U.S. hospital record of birth (created at the time of birth)</li> <li>• Religious record established before age five showing age or date of birth</li> <li>• Passport</li> <li>• Final Adoption Decree (the adoption decree must show that the birth information was taken from the original birth certificate)</li> </ul>
Evidence of Identity	<p>Current, evidence of identity in legal name that will appear on the Social Security card:</p> <ul style="list-style-type: none"> <li>• U.S. driver's license; or</li> <li>• U.S. State-issued non-driver identity card; or</li> <li>• U.S. passport</li> </ul> <p>Documents must show legal name AND biographical information (date of birth, age, or parents' names) and/or physical information (photograph, or physical description - height, eye and hair color, etc.).</p> <p>NOT ACCEPTED as evidence of identity:</p> <ul style="list-style-type: none"> <li>• birth certificate</li> <li>• hospital souvenir birth certificate, social security card stub or a social security record</li> </ul> <p>SSA may accept other documents that show legal name and biographical information: U.S. military identity card, Certificate of Naturalization, employee identity card, certified copy of medical record (clinic, doctor or hospital), health insurance card, Medicaid card, or school identity card/record. For young children, we may accept medical records (clinic, doctor, or hospital) maintained by the medical provider. We may also accept a final adoption decree, or a school identity card, or other school record maintained by the school.</p>
Evidence of U.S. Citizenship	U.S. birth certificate, U.S. Passport, Consular Report of Birth, Certificate of Citizenship, Certificate of Naturalization.
Evidence of Immigration Status	<p>Current unexpired Department of Homeland Security (DHS) document showing immigration status (e.g., Form I-551, I-94, or I-766). International students and exchange visitors also need e.g., Form I-20, DS-2019, or a letter authorizing employment from F-1 or J-1 sponsor</p> <p>NOT ACCEPTED: receipt showing application document. If no work authorization, will issue card for valid non-work reason. Card marked to show not work authorized.</p>

Complete and print [Application for a Social Security Card, Form SS-5](#) then deliver or mail it *with supporting documents* to the SSA. For the nearest office, use the SSA's online [local office locator](#) or call 2-1-1 for information.

#### *Replacement Card*

A Social Security card can be replaced for free if it is lost or stolen. Cardholders are limited to three replacement cards in a year and 10 during in a lifetime. The applicant who needs a replacement card must complete the [Application for a Social Security Card, Form SS-5](#).

#### *Card for Non-Citizen*

In general, only noncitizens who have permission to work from the Department of Homeland Security (DHS) can apply for a Social Security number. If a noncitizen does not have

permission to work in the United States but needs a social security number for other purposes, see ["If you do not have permission to work"](#) for further information.

### *Change of Name*

To change the name on a Social Security card, the applicant must show a recently issued document as proof of legal name change. These include:

- Marriage document;
- Divorce decree;
- Certificate of Naturalization showing a new name; or
- Court order for a name change.

For step by step instructions on securing a social security card, please refer to

### **Appendix C: Steps to Apply for or Replace Social Security Card**

### **Passports**

A passport is a document that certifies a person's citizenship and identity. Generally, a criminal conviction will not act as a bar to issuance of a passport unless it was for a drug-related offense or unless issuance would violate the terms of the applicant's parole, probation or sentencing.

The U.S. Department of State (DOS) passport application, [Form DS-11](#), does not include any questions about an applicant's criminal history. It does require the applicant to swear under oath that contents of the application are true and that the applicant has not met any of the forbidden "acts and conditions" listed in the application.<sup>26</sup> The applicant must swear to the following:

"I have not been convicted for a federal or state drug offense or been convicted for "sex tourism" crimes statute and I am not the subject of an outstanding federal, state or local warrant of arrest for a felony; a criminal court order forbidding my departure from the United States; a subpoena received from the United States in a matter involving prosecution for, or grand jury investigation of, a felony."

Depending on the circumstances of the applicant or passport holder, the Department of State can revoke or deny a passport.

**Table: Grounds for Revocation, Application or Renewal of Passport**

Mandatory Denial or Revocation	Discretionary Denial of Application or Renewal
a passport will be denied or revoked if the applicant crossed an international boundary or used the passport	Being in default on repatriation or medical assistance loans while abroad, or behind

in committing the offense <sup>27</sup>	\$2500.00 or more on child support payments;
An issued passport may be revoked, even for misdemeanor drug offenses, if the government finds that the offense should give rise to such disqualification <sup>28</sup>	Having been committed to a mental institution, or was legally declared incompetent by a court; or
	Having been denied previously, had their previous passport revoked, or been issued a temporary passport for specific reasons. <sup>29</sup>

### *Amending or Correcting Passport Information*

Information from the US State Department on how to amend or correct passport information can be found [here](#).

## **Adult Name Change**

It is not uncommon for a single person to have conflicting names on identification documents. If the Department of Public Safety cannot verify conflicting or incomplete names between two or more documents, they may not accept either as proof of identity. One way to resolve the discrepancy is to petition the court for a change of name. This option is not available to felons released or discharged for less than two years.

A request for an adult name change must be made in a petition filed with the court. A certified copy of the court order granting the change of name can then be used to establish legal identity as to one name.

### *Felony Conviction*

The name change can be granted at the court's discretion to a person with a final felony conviction only if:

- the person has been pardoned, discharged from TDCJ or completed probation ordered by a court and
- *Not less than two years* have passed from the date of the receipt of discharge or completion of probation.<sup>30</sup>

Certain legal requirements that must be met before the court will issue an Order granting the change of name. All adult petitions for a name change must:

- Be verified; that is, all of the information it contains must be sworn to as true.

- Include a Fingerprint Card - "a legible and complete set of the petitioner's fingerprints on a fingerprint card format acceptable to the Department of Public Safety and the Federal Bureau of Investigation."
- State the full name and place of residence of the petitioner;
- State the full name requested and the reason for the request, and
- State whether the petitioner has been the subject of a final felony conviction, or was convicted under Tex. Code Crim. P Ch. 62 (sex offender).

In addition to the above, the petition must include each of the following, or, if not available, a reason for the omission:

- the petitioner's full name, sex, race, date of birth, and social security number;
- driver's license number for any driver's license issued in the 10 years preceding the date of the petition;
- assigned FBI number, state identification number, if known, or any other reference number in a criminal history record system that identifies the petitioner, and
- any offense above the grade of Class C misdemeanor for which the petitioner has been charged and the case number and the court if a warrant was issued or charges filed for the offense.

A [Name Change Kit](#) with do-it-yourself forms is available for download from Texas Law Help. More information and instructions can be found in the Texas Young Lawyer's Association Publication "[Name Changes in Texas.](#)"

## Conflicting Names

A name change is available to previously incarcerated individuals with a felony conviction only if over two years have passed from the date of discharge or release from supervision and the date the petition is filed. For those who fall within the two year time frame or are still "on paper," one strategy to clear up conflicting names for the same person is to seek a Declaratory Judgment from the court declaring which name is the person's true legal name. Like a Petition for Change of Name, the Petition for Declaratory Judgment should be filed with the district clerk of the county where the person requesting the name change (the Petitioner), resides.

### *Declaratory Judgment*

The purpose of the Texas Uniform Declaratory Judgments Act<sup>31</sup> is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. A person who has a legal interest in a *writing* (such as a birth certificate or other document) and “whose rights, status or other legal relations are affected [may] question of construction or validity [of the writing] and obtain a declaration of rights, status or other legal relations thereunder.” Tex. Civ. Prac. & Rem. Code §37.004(a). The act is to be “liberally construed and administered.”<sup>32</sup>

For a sample Petition for Declaratory Judgment and Order, please refer to

**Appendix D: Sample Declaratory Judgment for Name - Petition and Order<sup>33</sup>**

## 2. Criminal History Records

A criminal record (“rap” sheet) is a record of an offender’s arrests and convictions. Any time the police fingerprint an offender, the information is added to the offender’s criminal history. The history will list the date of arrest, the charges, and the final disposition or outcome. Every person who has intersected with the criminal justice system –through arrest, deferred adjudication, dismissal, conviction or any other interaction --should have a copy of their criminal record and carefully review its contents. There are several good reasons to do so:

1. It provides the subject of the record a look at the kind of information that is available to the general public.
2. It allows the subject an opportunity to review the record for errors, explore record entries that may be removed (expunged), and request nondisclosure or pardon for eligible offenses.
3. Entries that are incorrect can be corrected.
4. It presents a shorter criminal history record to a prospective employer, credit reporting agency, government agency, or licensing authority that runs a background check.<sup>34</sup>

### Sources of Criminal Records

“Official” criminal records are maintained by the Federal Bureau of Investigation (FBI) and the Texas Department of Public Safety (DPS). The FBI is responsible for collecting and distributing criminal history information through the National Crime Information Center (NCIC). DPS performs the same function on the state level for the Texas Crime Information Center (TCIC).

#### *NCIC*

The [National Crime Information Center](#) (NCIC)<sup>35</sup> is a computerized index of criminal justice information that includes criminal record history information as well as information on fugitives, stolen property, and missing persons. NCIC records are not accessible to the general public. Data contained in NCIC is contributed by the FBI, federal, state, local and foreign criminal justice agencies, and authorized courts.

#### *TCIC*

Much like the NCIC, the [Texas Crime Information Center](#) (TCIC) is a computerized searchable database that contains criminal history records, information on stolen property,

missing persons, and the status of domestic violence protective orders issued under Chapter 71 of the Texas Family Code. Like the NCIC access to the TCIC is available 24 hours a day, 7 days a week. The TCIC is also linked to NCIC, effectively linking Texas to federal offense information and criminal history reported by every state.

### **Release of Criminal History Records**

DPS, the state agency that maintains the TCIC, is authorized to release a person's *full* criminal history record only to criminal justice agencies for criminal justice purposes, and to certain other legally authorized entities identified in the Government Code and a handful of other statutes. The search is fingerprint-based, and requires a fingerprint card from the person whose records are being sought that is less than 6 months old. DPS has outsourced its fingerprint service through an exclusive contract with a private vendor, L-1 Enrollment Services.

The information can be released to screen applicants for:

1. Certain governmental licenses (such as medical, law, educator);
2. Certain jobs serving vulnerable populations, especially children, the elderly and the disabled (such as day care centers, nursing homes, hospitals, mental health workers)
3. Authorized researchers,
4. Certain security sensitive jobs, such as nuclear power plants, financial institutions, etc.
5. Brady firearm sales
6. An individual or an agency that has a specific agreement with a criminal justice agency; county or district clerk's office;
7. The Office of Court Administration of the Texas Judicial System;
8. To the person himself or herself<sup>36</sup>

For step by step instructions on how to order criminal history records, please review

### **Appendix E: Steps to Order Criminal History Records**

### **Dissemination of Records by Private Entities**

A third-party vendor can acquire criminal history information directly from state, county, or city court records and make it available to the public, usually for a fee.<sup>37</sup> Under federal law,<sup>38</sup> users must have a legitimate purpose for conducting background research on websites that contain public data of all kinds. What qualifies as a "legitimate purpose" is so broad however, that nearly every background check falls within those broad parameters. If the

records were reported inaccurately, the mistake can be replicated over and over again with each vendor's database.

### *Consumer Reporting Agencies*

Private companies that provide criminal background checks combined with a credit report are restricted from reporting certain kinds of adverse information indefinitely. Under federal law,

a) no consumer reporting agency may make any consumer report containing any of the following information,

(5) Any other adverse items of information, other than records of convictions of crimes which antedates the report by more than *seven years*.

Fair Credit Reporting Act (FCRA), 15 USCS 1681c(a)(5)

Arrests that do not result in conviction cannot be reported if they are more than 7 years old. There is also a strong argument to be made under FCRA that in Texas, Deferred adjudication offenses that are discharged and dismissed and are more than 7 years old cannot be reported either because they are not convictions.

### *Liability for Wrongful Dissemination*

Private entities that compile and disseminate criminal history information for compensation face potential civil liability for violations. By law, private entities "shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d).

(b) Unless the entity is regulated by the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. Sections 6801 to 6809), a private entity described by Subsection (a) that purchases criminal history record information from the department or from another governmental agency or entity in this state:

(1) may disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity:

(A) originally obtains that information; or



(B) receives that information as updated record information to its database; and

(2) shall notify the department if the entity sells any compilation of the information to another similar entity.

The private entity is “liable for any damages that are sustained as a result of the violation by the person who is the subject of that information,” as well as the person’s court costs and attorney’s fees.<sup>39</sup>

### *DPS and Texas Public Information Act*

A private entity that purchases records from DPS and wrongfully releases information that is under an order of expunction or nondisclosure can be banned from access to DPS records for up to one year – but only upon a *court order* showing that *three or more* violations have occurred:

“If the department receives information indicating that a private entity that purchases criminal history record information from the department has been found by a court to have committed three or more violations of Section 552.1425 [of the Texas Public Information Act] by compiling or disseminating information with respect to which an order of expunction or an order of nondisclosure has been issued, the department may not release any criminal history record information to that entity until the first anniversary of the date of the most recent violation.”<sup>40</sup>

### *Enforcement*

Enforcement is through a lawsuit in district court brought by “the attorney general or an appropriate prosecuting attorney.” The district court may issue a warning to a private entity for a first violation, after which the entity is liable to the state for a civil penalty not to exceed \$500 for each subsequent violation. Once the penalties are collected, they “shall be deposited in the state treasury to the credit of the general revenue fund.”<sup>41</sup>

## **Contents of Criminal Records**

Generally, every intersection with law enforcement that starts with an arrest, regardless of outcome, will be recorded in a person’s criminal history. Arrests not leading to conviction are subject to expunction (removal from the record). Convictions will remain in an adult’s criminal history record indefinitely. There are four main components to each offense: arrest, prosecution, conviction and disposition. There are several common misconceptions about the contents and availability of criminal history information. For example:

- If the arrest did not result in a final conviction, it will not appear on a person’s criminal

history record.

*False.* Arrests are part of a criminal record regardless of the outcome.

- A deferred adjudication in which the offender has successfully completed its terms will not appear on a criminal history record because there was no conviction or jail time.

*False.* A deferred adjudication is part of a person's criminal history, but may be subject to an order of nondisclosure.

## Case Dispositions and Sentencing Alternatives

Many criminal case dispositions and alternative sentencing options that appear on a person's criminal history record can blur the line leading from arrest to final conviction. These dispositions can cause confusion among employers reviewing criminal background check and the offenders themselves. All of these alternatives are the outcome of plea negotiations (plea bargains) in which the defendant is presumed to be aware of the consequences of agreement. In reality, many who enter into a plea agreement do not fully understand the quality and quantity of information that will later be included in their criminal history records, including a finding of guilt, the length of time the offense will remain on their record (forever); the negotiated charge, classification, punishment and finality of the proceeding. The kind and quality of sentencing alternatives vary widely among Texas's 254 counties. The availability of alternatives and the extent to which they are offered depends upon each local prosecutor's office.

Some of the more common alternatives include pretrial diversion, deferred disposition, deferred adjudication and deferred prosecution.

### *Pretrial Diversion*

Pretrial diversion applies only to certain misdemeanors, usually committed by first-time offenders. It is not available for offenses involving intoxication. Other features of pretrial diversion:

- diversion is granted usually before the case is filed.
- The accused does not admit guilt, but agrees to follow terms of the diversion agreement, which can include attending classes, rehabilitation and other recommendations.
- If the terms of the diversion agreement are met, the case is never filed.
- If the defendant fails to meet the terms or violates the agreement, the case will be filed and proceed in the usual manner and will (unless another plea is entered or the charges are dismissed) appear as a conviction in a person's criminal history.<sup>42</sup>

- A successful diversion, will NOT appear as a conviction or as a dismissal because charges were never filed.
- A successful pretrial diversion WILL be included in a criminal history record, as well as a record of the arrest leading to the diversion.

### *Deferred Adjudication*

The only specific limitations on granting deferred adjudication are as follows:

"A judge may place on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code [all of which are felonies and assaultive offenses], regardless of the age of the victim...only if the Judge makes a finding in open court that placing the defendant on community supervision is in the best interest of the victim."

Tex. Code Crim.P. Art. 42.12, Sec 5. See also Tex. Code. Crim. Pro. Art. 42.12 Sec.5(d) and (e) which include other specific limitations.

Unlike a pretrial diversion, the charges are filed but the prosecution is delayed ("deferred") in exchange for the defendant's plea of guilty or no contest. Other features:

- Deferred adjudication is offered only after charges are filed.
- Deferred adjudication resembles a type of probation in which the defendant agrees to certain terms and conditions in exchange for freedom.
- Like probation or other forms of community supervision, deferred adjudication involves payment of fines and costs, monthly reporting to an officer and payment of a monthly fee.
- If the defendant successfully completes the terms and conditions, the case will be dismissed, and the individual will be discharged from probation.
- If the terms are not met, the prosecutor may re-file the case and prosecute it. There is no requirement to re-file the case, however. The defendant is only entitled to a hearing limited to the determination by the Court of whether it is going to proceed to adjudication of guilt. See Tex. Code Crim. Pro. Art. 42.12 Sec 5 (b).
- 
- A successful deferred adjudication WILL appear in a criminal history record as dismissal of charges.
- A deferred adjudication above a class C misdemeanor cannot be expunged or removed from a person's record even if it is later dismissed following a period of community supervision.<sup>43</sup> It may, however, be amenable to nondisclosure, depending on the offense. Tex. Gov't Code 411.081

Many organizations and agencies have internal hiring policies that exclude consideration of a record of a deferred adjudication as a conviction for employment-related purposes. The Texas Department of Licensing and Regulation (TDLR), for example, will not consider the record of a deferred adjudication a "conviction" for the purpose of applying for or maintaining a vocational license.

#### *Deferred Disposition*

Unlike deferred adjudication, which covers Class A and B misdemeanors, deferred disposition is limited to Class C misdemeanors only. Deferred dispositions are often mistakenly referred to as deferred adjudications, but the requirements and outcome for each are quite different. Other features:

- There is no monthly reporting to a probation officer.
- Failure to comply with the terms will result in the imposition of a judgment and conviction that will be reported to DPS.
- If the defendant does not re-offend during the deferral period and complies with the terms, the charges will be dismissed.
- If the deferred disposition is successfully completed, the defendant may seek an expunction and have the disposition removed from his or her criminal history record.

#### *Felony Pretrial Diversion*

At least one Texas prosecutor's office offers a felony pretrial diversion program for eligible offenses as determined by the district attorney. In Travis County, the District Attorney's Office will consider an application for felony pretrial diversion by an offender charged with a third degree or state jail felony non-violent offense if the defendant is a first time offender. The program allows the offender to avoid prosecution if there are no new arrests during the term and all the requirements of the term are completed. The offender may be required to attend counseling, make restitution, and perform community service and other conditions. If the term is completed successfully, the offender can apply for an expunction of the arrest record.<sup>44</sup>

#### *Deferred Prosecution - Juveniles Only*

Deferred adjudication refers to adult proceedings, while deferred prosecution applies only to juveniles. In Texas only juveniles under the age of 17 that are alleged to have committed crimes may be considered for "Deferred Prosecution"<sup>45</sup> In a deferred prosecution, the juvenile completes an informal probation with the county. If successful, the charges are dismissed and the juvenile is not prosecuted. Unlike adult deferred adjudication, a juvenile has the absolute

right to request deferred prosecution. If the probationary period is unsuccessful, the juvenile retains the ability to fight the charges.

## Protective Orders

Protective Orders are orders issued by a court to prevent continuing acts of family, dating or sexual violence. They can be part of a person's criminal history record and are reported to federal, state and local authorities. Protective orders are typically of limited duration and expire on the date specified in the Order or by statute, if the order does not specify an end date.

Protective orders issued under the Texas Family Code may not involve an arrest or conviction, but can still appear in a person's criminal history record or in the database of law enforcement agencies. The agency may enter protective orders in the computer records of outstanding warrants as notice that the order has been issued and is currently in effect. The clerk of the court where the order was issued is to notify the agency when the order is expired, or has been vacated or dismissed, so that the protective order may be removed from the list of outstanding warrants.<sup>46</sup>

. -- (b) A law enforcement agency may enter a protective order in the agency's computer records of outstanding warrants as notice that the order has been issued and is currently in effect. On receipt of notification by a clerk of court that the court has vacated or dismissed an order, the law enforcement agency shall remove the order from the agency's computer record of outstanding warrants

People who have had a protective order issued against them at any time in the past, even if the order is expired, should review their criminal history record to ensure that the status of the protective order is accurately reported.

There are several different kinds of protective orders and each varies in duration.

### *Protective Order - Texas Family Code*

A protective order under Chapter 71 of the Texas Family Code is a civil court order issued to prevent continuing acts of family violence, dating violence, or child abuse. By law, the TCIC is required to maintain information about "active" domestic violence protective orders.<sup>47</sup>

Features:

- Civil order that is criminally enforceable
- Can be enforced in any state. A protective order issued in another state may be enforced in Texas; a protective order issued by a Texas court is enforceable in all other states.

- Can be issued without an arrest or corresponding criminal charges.<sup>48</sup>
- Has a maximum duration of 2 years:
  - If the order is violated, it *may* be extended or renewed for up to two additional years;
  - Court has discretion to exceed two years in cases of serious bodily injury or perpetrator was the subject of two or more previous protective orders.
  - If the order expires while the person against whom it is directed is incarcerated, the order is *automatically extended for one year from the date the person is released from incarceration.*<sup>49</sup>

After one year, the Respondent may file a motion to vacate the protective order upon showing that there is no continuing need for Protective Order.<sup>50</sup>

#### *Emergency Protective Order (Magistrate's Order)*

A Magistrate's Order for Emergency Protection (Emergency Protective Order, or "EPO") is authorized by the Texas Code of Criminal Procedure,<sup>51</sup> and is issued by a magistrate following an arrest for an offense involving family violence or a sexual assault. Features:

- Requires an arrest for stalking, sexual assault or an offense involving family or dating violence
- Issued for 31–61 days or for up to 91 days if a weapon is involved.
- Arrest often results in charges against perpetrator (e.g., assault with family violence) Law enforcement is notified of the EPO.

#### *Protective Orders - Sexual Assault, Trafficking and Stalking*<sup>52</sup>

The Sexual Assault Protective Order is designed to protect survivors of sexual assault, sex trafficking and stalking from the ongoing threat of further harm from the alleged offender.

Features:

- Can be issued regardless of relationship between applicant and offender;
- Applicant must be a victim of sexual assault, sex trafficking or stalking
- Does not require an accompanying police report, arrest, or charges against the offending person
- May last a lifetime, depending on circumstances

### 3. Expunction, Nondisclosure, and Pardon

A criminal record can create barriers to employment, housing, credit, and other life necessities. Once the ex-offender obtains a copy of her criminal history record, it may be possible to remove arrest records not resulting in conviction, or restrict information depending on the offense. Petitions for nondisclosure and for expunctions are two methods by which Texas criminal records can be mitigated. This section is about the availability of these methods and information on how to proceed with each.

#### Difference Between Expunction and Nondisclosure

The expunction of criminal records is an aspect of criminal law that most people do not understand.<sup>53</sup> An expunction<sup>54</sup> authorizes the actual destruction of the information surrounding the arrest. A non-disclosure<sup>55</sup> can limit public access to an arrest record but cannot destroy the record information.

Another difference between expunction and nondisclosure is that expunction prohibits any dissemination or use of the information relating to the offense to anyone, whereas nondisclosure shields it from the public but not from law enforcement agencies and other entities named in the statute, such as the State Board for Educator Certification and the Texas Department of Licensing and Regulation.<sup>56</sup>

#### *About Deferred Adjudications*

Many believe that by accepting a deferred adjudication or disposition that their criminal record will not reflect that offense, and no evidence of it will be part of their criminal history record.<sup>57</sup> While it is true that a person who successfully completes a term of deferred adjudication *will not show a final conviction* on their criminal record, the records will still include details of the *arrest*. Expunction is not available as a remedy to remove deferred adjudication offenses *above* a class C misdemeanor.”

#### Expunction

In Texas, expunction is available only under very narrow circumstances. Because it is a limited remedy, anyone with a criminal history record should be especially wary of services that claim to clean up the records for a fee. Expunction cannot remove the record of an adult criminal conviction except in the rare case where the offender has been pardoned, where the

conviction was thrown out on appeal, or .where the defendant was granted relief on the basis of actual innocence if the court order so states. Tex. Code Crim. P.Art. 55.01(a)(1)(B)(ii)<sup>58</sup> –

**Table: Eligibility for Expunction**

<b>EXPUNCTION</b>	
<b>ELIGIBLE</b>	<b>INELIGIBLE</b>
Class C misdemeanors where charges were dismissed following a period of deferred adjudication. <sup>59</sup>	Deferred adjudication sentences for Class B, Class A, or felony offenses.
Pardons restoring civil rights and pardons predicated upon a finding of innocence. <sup>60</sup> Or court order indicating that the individual was released based to actual innocence..	Any offense above a Class C misdemeanor, even if the charges are later dismissed following deferred adjudication. <sup>61</sup>
	Acquittals, dismissals, and arrests arising out of a “criminal episode” or conviction for another offense for which the person was convicted, or is pending prosecution
	A person may not expunge records and files relating to an arrest that occurs pursuant to a warrant issued under Section 21 of Article 42.12. (probation revocation warrant)
	A person who intentionally or knowingly absconds from the jurisdiction after being released from jail on bond.

*Class C Misdemeanors Resulting in Dismissal*

Expunction for Class C deferred adjudications is governed by two separate legal provisions, depending upon whether the sentence was imposed by justice court, municipal court, or district court.

- If the Class C deferred adjudication was imposed in justice court or municipal court, a request for expunction can be filed under Tex. Code Crim. P. Art 45.051(e).
- If the Class C deferred adjudication was imposed in county or district court, expunction can be filed under Tex. Code Crim. P Art. 55.01(a)(2).

*Order Directing Expunction*

Unlike nondisclosure, where the court has discretion to grant “in the best interest of justice,” a petition for expunction must be granted if the offense and resulting arrest or



adjudication are eligible under the statute. The court must grant the request to expunge if all of the other legal criteria are met.

### *Effect of Expunction*

After the expunction is ordered, “the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited” and “the person arrested may deny the occurrence of the arrest and the existence of the expunction order.”<sup>62</sup> The Order applies to “all records and files relating to the arrest” in the district court in the county where the arrest occurred.<sup>63</sup> If the offense is eligible for expunction, the judge cannot dismiss or deny the request for expunction.<sup>64</sup> Once the order of expunction is entered, the person may deny that the arrest occurred, and even deny the existence of the expunction order.<sup>65</sup>

For step by step instructions for expunction of criminal history records, please refer to:

### **Appendix F: Steps for Expunction**

Free plain-language court forms for expunction are available at Texas Law Help, [www.texaslawhelp.org](http://www.texaslawhelp.org) - [Expunction Packet](#).

## **Nondisclosure**

Unlike expunction, the nondisclosure process does not remove an offense from a person’s criminal history record; rather, it shields the record from public disclosure. To restrict access criminal to history through nondisclosure, the following conditions must be met:

- The offense must be among those eligible for nondisclosure, AND
- The offender must have completed deferred adjudication or community supervision, AND
- The offender must have received a discharge and dismissal.

### *Limitations on Nondisclosure*

As with expunctions, it is important to understand the legal limitations on nondisclosure. Anyone who has *ever* committed any of the offenses appearing in the second column (“Ineligible Offenses”) of the following table, regardless of the outcome (including successful deferred adjudication) are NOT eligible to petition for nondisclosure.<sup>66</sup>

It is also important to remember that the Nondisclosure Order only restricts *public* access. Criminal justice agencies can still release the records subject to nondisclosure to other

criminal justice agencies, other entities authorized by statute (such as schools, hospitals, public licensing boards, and certain government agencies), and to the person who is the subject of the criminal history record.<sup>67</sup>

A person who is currently on deferred adjudication may seek nondisclosure of a previous deferred adjudication that resulted in dismissal and discharge.<sup>68</sup> A person who commits another offense while on deferred adjudication is not eligible to seek nondisclosure of the previous deferred adjudication.

*Waiting Periods*

There is a waiting period that must elapse after the date of discharge and dismissal and before filing the petition. The waiting period depends upon the kind of offense. Note: the waiting period begins *not* from the date the plea was entered, but from the date the charges were dismissed or the period of deferred adjudication was *concluded*.<sup>69</sup>

The mandatory waiting periods before the petition for nondisclosure can be filed are as follows:

- Eligible misdemeanors (those that do not appear on the list below) - NO waiting period; petition can be filed immediately upon discharge and dismissal.
- Misdemeanors listed below: *2 years* from date of discharge and dismissal.

**Table: Nondisclosure - Eligible and Ineligible Offenses**

<b>NONDISCLOSURE</b>	
<b>ELIGIBLE OFFENSES</b>	<b>INELIGIBLE OFFENSES</b>
All misdemeanors NOT listed below - no waiting period; for those listed - 2 year waiting period	Never eligible regardless of the outcome (even completion of deferred adjudication)
Abuse of corpse	Aggravated sexual assault
Advertising for placement of child	Sexual assault
Aiding suicide	Prohibited sexual conduct (incest)
Assault	Aggravated kidnapping
Bigamy	Burglary of a habitation with intent to commit any of the above offenses
Cruelty to animals	Indecency with a child
Deadly conduct	Compelling prostitution
Destruction of flag	Sexual performance by a child
Discharge of firearm	Possession or promotion of child pornography
Disorderly conduct	Unlawful restraint, kidnapping, or aggravated kidnapping of a person younger than 17 years of

	age
Disrupting meeting or procession	Attempt, conspiracy, or solicitation to commit any of the above offenses
Dog fighting	Capital murder
False alarm or report	Murder
Harassment	Injury to a child, elderly individual, or disabled individual
Harboring runaway child	Abandoning or endangering a child
Hoax bombs	Violation of protective order or magistrate's order
Indecent exposure	Stalking
Interference with emergency telephone call	Any other offense involving family violence
Leaving a child in a vehicle	
Making a firearm accessible to a child	
Obstructing highway or other passageway	
Possession, manufacture, transport, repair or sale of switchblade knife or knuckles	
Public lewdness	
Riot	
Silent or abusive calls to 9-1-1 service	
Terroristic threat	
Unlawful carrying of handgun by license holder	
Unlawful carrying weapons	
Unlawful possession of firearm	
Unlawful restraint	
Unlawful transfer of certain weapons	

*Deferred Adjudication and Nondisclosure*

A person who is currently on deferred adjudication may seek nondisclosure of a previous deferred adjudication that resulted in dismissal and discharge.<sup>70</sup> A person who commits another offense while on deferred adjudication or during the applicable waiting period is not eligible to seek nondisclosure of the previous deferred adjudication.

*Nondisclosure Process*

The nondisclosure process is a court proceeding filed in the court that entered the original adjudication. The person seeking nondisclosure must file a petition for requesting nondisclosure, notify the prosecutor, and appear at a court hearing before a judge.

### Order of Nondisclosure

Unlike an expunction, which is mandatory if the expunction criteria are met, the court makes the decision if nondisclosure is "in the best interest of justice." If the court finds that it is, it "shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication."<sup>71</sup>

The order is then sent to DPS, who turn forwards it to "all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state, and to all central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order."<sup>72</sup>

### Effect of Order of Nondisclosure

If granted, the order prohibits criminal justice agencies from disclosing criminal history record information about the deferred adjudication to the public, even if the information is sought under the Texas Public Information Act.<sup>73</sup> If access to a criminal record that is covered by a nondisclosure order is requested by someone not authorized to view it, the agency may inform the requestor that it has "no record."<sup>74</sup> A person who releases criminal history information under an order of nondisclosure can be subject to criminal penalties.<sup>75</sup>

For Steps for Nondisclosure and sample forms, please refer to:

### **Appendix G: Sample Petitions - Nondisclosure**

### **Appendix H: Steps - Nondisclosure**

## Pardon

Pardons, or executive clemency, are very rare because the criterion for granting them is narrow and each must be approved by the governor. Clemency includes full pardons, conditional pardons, pardons based on innocence, commutations of sentence, and emergency medical reprieves. Unlike the expunction and nondisclosure process, which are court proceedings, an application for a pardon must be made to the Texas Board of Pardons and Paroles. Pardons are granted by the governor following the Board's recommendation.

### *Offenses NOT Eligible for Pardon*

The following offenses and situations are not eligible for a pardon request:

- treason
- arrests with no conviction
- deferred adjudication
- early dismissals from probation
- Class C misdemeanor
- out-of-state felony conviction
- federal conviction
- applicants who were denied a full pardon less than one year prior to the present application

### *Pardon Process*

The clemency process begins with a lengthy application. Before beginning, the Board of Pardons and Paroles recommends that the applicant obtain all of the following documents:

- offense reports for any arrests;
- certified court documents for these arrests, including complaints, indictments, judgments, and orders of dismissal;
- an official criminal history statement, and
- three current letters of recommendation from persons other than family members who are familiar with the applicant.

The Board has discretion to recommend clemency based on the information provided.<sup>76</sup>

As of January 1, 2012, the Texas Constitution was amended and the Governor was given the authority to pardon deferred adjudication offenses. The constitutional amendment was codified at Tex. Code Crim. Pro. Art. 48.01 which was amended to provide for this relief.

For additional information about pardons of deferred adjudication offenses visit

[http://www.tdcj.state.tx.us/bpp/misc/info\\_on%20Pardons\\_inv\\_com\\_terms.pdf](http://www.tdcj.state.tx.us/bpp/misc/info_on%20Pardons_inv_com_terms.pdf)

### **Resources**

State Bar of Texas, "[Expunctions in Texas](#)" booklet available for download.

Texas Law Help, [www.texaslawhelp.org](http://www.texaslawhelp.org) - [Expunction Packet](#) forms and instructions

[Nondisclosure Information and sample forms](#) - Collin County (can be adapted for use in other Texas counties)

## 4. Employment

Seventy-three percent of human resources professionals said their company, or an agency hired by their company, conducted criminal background checks for all job candidates, according to a [2010 survey by the Society for Human Resource Management](#).

According another study, nearly one in three adults (31.7 percent) in the United States is estimated to have a criminal record on file with the states that will show up on a routine criminal-background check. African-American and Latino workers are the most negatively impacted by the criminal-justice system. Latinos are incarcerated at a rate more than twice that of whites, while African Americans are incarcerated at a rate six times that of whites.<sup>77</sup>

Finding employment may one of the greatest challenges facing previously incarcerated persons. Employers may legally refuse to hire a person based on a criminal record. Depending on the occupation, state licensing boards can restrict access to vocational licenses based on a person's criminal history. Other challenges can include finding access to child care during work hours and transportation to and from the job.

This section addresses general employment issues commonly encountered by previously incarcerated people. Vocational and occupational license restrictions are addressed elsewhere in this Guide.

### Civil Rights<sup>78</sup>

#### *Bars to Hiring*

A handful of states that protect job applicants from discrimination on based on criminal history, but Texas is not among them.<sup>79</sup> A Texas employer can refuse to hire a job applicant for nearly any reason, including a criminal history record, unless the refusal violates federal antidiscrimination laws. Texas law allows employers to terminate an employee for any reason that doesn't violate federal civil rights laws.

Title VII of the Civil Rights Act of 1964 prohibits both disparate treatment and disparate impact. However, because of the disparate impact of the criminal-justice system on communities of color, the EEOC has found that "an employer's policy or practice of excluding individuals from employment on the basis of their conviction records has an adverse impact on [African-Americans and Latinos]."<sup>80</sup> Because of the adverse impact on minorities, EEOC policy prohibits employers from imposing blanket hiring prohibitions on job seekers based on criminal

records. Employers are required to make an individual assessment of whether a person's criminal record is "job related."

Despite this important federal protection, more than 60 percent of large employers reported that they would "probably not" or "definitely not" consider a job applicant for once aware of the individual's criminal record.<sup>81</sup> African-American and Latino men with a criminal record are less likely to be offered employment than similarly situated whites.<sup>82</sup>

An employer's use of criminal history information may violate civil rights laws if the offense for which they were convicted is "job related." As a practical matter, proving that a person was unfairly denied employment based on criminal history is more difficult to prove than making a case that the person was discriminated against on the basis of race, color or national origin.<sup>83</sup> If 66% of Texas ex-offenders reentering are classified as Black or Hispanic, the applicant who is rejected for employment may be better able to prove that employer's underlying reason was based on the person's race, not record.<sup>84</sup> Civil rights laws interpreting racial discrimination are more clearly settled than those involving criminal history discrimination, and may provide a clearer legal path to relief.

#### *EEOC 2012 Enforcement Guidance*

In April 2012 the U.S. Equal Employment Opportunity Commission (EEOC) issued a formal document on [Enforcement Guidance](#) for employers, employment agencies, applicants and employees on the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964.<sup>85</sup> Excerpts from the "[Frequently Asked Questions](#)" accompanying the EEOC's release of the guidelines are worth including here:

##### *1. How is Title VII relevant to the use of criminal history information?*

There are two ways in which an employer's use of criminal history information may violate Title VII. First, Title VII prohibits employers from treating job applicants with the same criminal records differently because of their race, color, religion, sex, or national origin ("disparate treatment discrimination").

Second, even where employers apply criminal record exclusions uniformly, the exclusions may still operate to disproportionately and unjustifiably exclude people of a particular race or national origin ("disparate impact discrimination"). If the employer does not show that such exclusion is "job related and consistent with business necessity" for the position in question, the exclusion is unlawful under Title VII.

##### *2. Does Title VII prohibit employers from obtaining criminal background reports about job applicants or employees?*



No. Title VII does not regulate the acquisition of criminal history information. However, another federal law, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (FCRA), does establish several procedures for employers to follow when they obtain criminal history information from third-party consumer reporting agencies. In addition, some state laws provide protections to individuals related to criminal history inquiries by employers.

*3. Is it a new idea to apply Title VII to the use of criminal history information?*

No. The Commission has investigated and decided Title VII charges from individuals challenging the discriminatory use of criminal history information since at least 1969 [citations omitted]...Thus, applying Title VII analysis to the use of criminal history information in employment decisions is well-established.

\*\*\*

*6. Is the Commission changing its fundamental positions on Title VII and criminal record exclusions with this Enforcement Guidance?*

No. The Commission will continue its longstanding policy approach in this area:

The fact of an arrest does not establish that criminal conduct has occurred. Arrest records are not probative of criminal conduct[.] However, an employer may act based on evidence of conduct that disqualifies an individual for a particular position.

Convictions are considered reliable evidence that the underlying criminal conduct occurred[.] National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions. A policy or practice that excludes everyone with a criminal record from employment will not be job related and consistent with business necessity and therefore will violate Title VII, unless it is required by federal law.

The Enforcement Guidance also provides best practices for employers to consider when making employment decisions based on criminal records.<sup>86</sup>

*"Ban the Box"*

"Ban the Box" is a nationwide campaign that calls for the elimination of the questions about past convictions on employment applications and "boxes" on a variety of applications (i.e. employment, housing, social services, etc.). For more on ban the box and other efforts to ban inquiry on applications about a person's criminal history, visit [www.allofusornone.org](http://www.allofusornone.org).

## **Occupational Outlook Handbook**

The [Occupational Outlook Handbook](#) is an annual publication of the U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). It

covers hundreds of occupations and breaks down information on each, including a description of the job duties, working conditions, training and education required for specific occupations, expected earnings, and the anticipated job market for a specific occupation, The Handbook also provides links to the job market in each state.<sup>87</sup>

## Work Authorization Documents

Before applying for a job, job seekers should be aware of the employment eligibility verification required by federal law and be prepared to produce the required documents. When hired, employees are required to prove that they are legally entitled to work in the United States. Employers are required to verify the identity and eligibility to work for all new employees and to keep the verification form on file. All employees, citizens and noncitizens, hired after November 6, 1986 and working in the U.S. must complete United States Citizenship and Immigration Services (USCIS) [Form I-9](#) , Employment Eligibility Verification, to prove authorization to work in the U.S. Failure to provide the verification within 3 days of hire can result in termination of the new employee.

### *I-9 Employment Verification Form Requirements*

A variety of documents are acceptable to prove work authorization. The employee must provide to his employer, within three days of hire, the following:

- One document that establishes both identity and employment eligibility (on List A on the I-9) OR
- One document that establishes identity (on List B), and another document establishing employment eligibility (on List C).

By law, the employer *does not* get to choose which documents the employee must submit, and is not permitted to *retain* the original identification presented. The employer may only photocopy the ID and must return it to the employee.

**Table: I-9 Employment Verification Documents**

<b>I-9 EMPLOYMENT VERIFICATION DOCUMENTS</b>				
<b>LIST A</b> (Documents that establish both identity and employment eligibility)	<b>OR</b>	<b>LIST B</b> (Documents that establish identity only)	<b>AND</b>	<b>LIST C</b> (Documents that establish employment eligibility only)

<ul style="list-style-type: none"> <li>• United States Passport</li> <li>• Permanent Resident Card or Alien Registration Receipt Card (I-551)</li> <li>• Temporary Resident Card (I-688)</li> <li>• Employment Authorization Document (I-766, I-688B, or I-688A)</li> <li>• Foreign Passport with temporary I-551 stamp</li> <li>• For aliens authorized to work only for a specific employer, foreign passport with Form I-94 authorizing employment with this employer</li> </ul>		<ul style="list-style-type: none"> <li>• Driver's license issued by a state or outlying possession</li> <li>• ID card issued by a state or outlying possession</li> <li>• Native American tribal document</li> <li>• Canadian driver's license or ID card with a photograph (for Canadian aliens authorized to work only for a specific employer)</li> <li>• School ID card with a photography</li> <li>• Voter's registration card</li> <li>• U.S. Military card or draft record</li> <li>• Military dependent's ID Card</li> </ul>		<ul style="list-style-type: none"> <li>• Social Security account number card without employment restrictions</li> <li>• Original or certified copy of a birth certificate with an official seal issued by a state or local government agency</li> <li>• Certification of Birth Abroad</li> <li>• US Citizen ID Card</li> <li>• Native American tribal document</li> <li>• Form I-94 authorizing employment with this employer (for aliens authorized to work only for a specific employer)</li> </ul>
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Note that a *current voter registration card* in List B is as valid a form of documentation for the I-9 as is a driver's license or identity card.

*No I-9 Verification Documents*

An employee who fails to produce the required document, or a receipt for a replacement document if the original is lost, stolen or destroyed within three business days of the date employment begins can be terminated. An employee who shows a receipt to replace a document has ninety days to present the original documents.

*E Verify*

E-Verify is an Internet-based system run by the United States Citizenship and Immigration Services (USCIS) that allows companies to verify an employee's authorization to work in the United States. Though all employers must verify their employees' employment eligibility with Form I 9, participation in E-Verify is usually voluntary unless required by state law. Seventeen states require employer use of e-Verify; Texas is not among them.<sup>88</sup>

E-Verify compares Form I-9 information to data from U.S. Department of Homeland Security and Social Security Administration. The following "[Know Your Rights](#)" list is adapted from the USCIS e-Verify information site.

- Employers must inform prospective employees that they use e-Verify by posting a notice, or by “electronic notification.”
- E-Verify can be used for new hires only, not current employees.
- If an employer uses e-Verify, the employer must use it for all new hires regardless of national origin or citizenship.
- E-Verify must be used only *after* an employee has been hired and accepted employment. The I-9 must be completed first.
- Employers may not prescreen applicants through E-Verify.
- An employer who receives an information mismatch, or Tentative Nonconfirmation (TNC), in E-Verify, the employer must promptly provide the employee with information about how to contest the TNC, including a written notice provided by E-Verify. Note: the employee has 8 workdays to contest the TNC.
- If an employee decides to contest the TNC, the employer must provide the employee with a referral letter provided by E-Verify that contains specific instructions and contact information.
- Employers may not take any adverse action against an employee because he or she contests a TNC. Adverse actions include firing, suspending, withholding pay or training, or otherwise infringing upon his or her employment.
- The employee must be given eight federal government work days to contact the appropriate federal agency to resolve the TNC.

An employee who receives a Tentative Nonconfirmation (TNC) can contest it by contacting the “the appropriate agency “to resolve the mismatch within *eight federal government work days* from receiving the TNC. To resolve an “SSA TNC,” the employee must visit an SSA office and bring the TNC referral letter and required documentation. To resolve a “DHS TNC,” the employee must call the number listed on the referral letter.

## **Job Search with Criminal Record**

It is important for a person with a criminal history to be up front about their experience and explain the circumstances of the arrest. The employer should assess whether the conduct is closely enough related to the job to justify denial of employment. Before going in to an interview, the applicant should be prepared to point out that the past offense(s) are not closely related to the job to which she is applying, after considering

- the nature of the job,
- the nature and seriousness of the offense, and
- the length of time since it occurred.

### *Tips on Conducting a Job Search with a Criminal Record*

A job seeker with a criminal history knows that a background check is coming. Employers want to know if the applicant has the skills to succeed in the position. Here are some tips for previously incarcerated job seekers from employment and human resource professionals:<sup>89</sup>

#### Know everything about your conviction

It's important to know exactly what you've been convicted of and whether the record was expunged. Many have no idea about the actual charges that they were convicted of. It makes a difference. Applicants should know enough about their criminal record to explain the details. If not, an employer may think that the applicant doesn't care enough about it to explain it to them.

#### Explore volunteer opportunities

Find at least two civic organizations to volunteer at in order to obtain solid references to back up their application. Six to 18 months of volunteer work will go a long way in getting a usable reference."

#### Consider the type of company to which you're applying

Depending on the type, size or management style of a company, it may or may not conduct a criminal background check or be more lenient in accepting applicants with a criminal past. Most applications ask whether you have been arrested or convicted of a crime. Some will ask for felony convictions only, which means conviction of a misdemeanor might be allowed. A convicted felon may have better opportunities in, small businesses where he may have an opportunity to explain what happened directly to the owner."

#### Participate in a re-entry program

Programs are available to help job seekers with a criminal record re-enter society and secure employment. One such initiative is the [Prison Entrepreneurship Program](#), a Houston-based nonprofit whose mission is to "stimulate positive life transformation for executives and inmates, uniting them through entrepreneurial passion, education and mentoring." The program connects convicted felons with top executives, MBA students and politicians, and provides education, training and support. This is just one example; search the Web for local organizations that offer similar services.

#### Be honest

This may be the most important advice. Be honest about references, employment history and criminal records. Failing to disclose when asked can also cause the employer to fire the employee later for failing to disclose it at the time of hire.

A job seeker with a felony record who has 'paid his or her debt' should be transparent about it. Mention it after real interest has been expressed but before the job offer is made. Always answer questions about it truthfully, and never act as if you are hiding something, as it is worse to have it exposed in a background check."

*Crimes of "Moral Turpitude"*

A common question on job applications is whether the applicant has ever been charged or convicted of a crime involving "moral turpitude." Convictions for crimes of moral turpitude can affect a person's ability to obtain a vocation a license, security clearance, or employment. However, many applicants have little idea what might constitute a crime of "moral turpitude" because the crimes are defined in case law, not in the criminal statutes. Moral turpitude is:

- The quality of a crime involving grave infringement of the moral sentiment of the community,
- Conduct that is base, vile, or depraved, and
- Something that is inherently immoral or dishonest.<sup>90</sup>

**Table: Crimes of Moral Turpitude**

The following is a list of crimes involving moral turpitude as defined by case law:<sup>91</sup>

<b>CRIMES OF MORAL TURPITUDE</b>		
<b>Offense</b>	<b>Moral Turpitude</b> As Defined In Case Law	<b>NOT Moral Turpitude</b> As Defined In Case Law
Driving While Intoxicated		<i>Stephens v. State</i> , 417 SW2d 286 (Tex.Crim.App. 1967)
Possession of Marijuana (misdemeanor)		<i>Hernandez v. State</i> , 976 SW2d 753, 756 (Tex.App. – Houston [1 <sup>st</sup> Dist.], pet denied, 980 SW2d 652 (Tex.Crim.App. 1998)
Issuance of Bad Check		No, unless it was done with intent to defraud. <i>Dallas County Bail Bond Board v. Danny Mason</i> , 773 SW2d 586 (Tex.App. – Dallas, 1989). <i>Caveat</i> : employers often automatically deny employment because this offense is under the "Fraud" section of the Penal Code.
Criminally Negligent Homicide		<i>Arnold v. State</i> , 36 SW 3-D 542, 546-547 (Tex.App. – Tyler 2000)
Prostitution	<i>Holgin v. State</i> , 480 SW2d 405 (Tex.Crim.App. 1972)	

Theft	<i>Benshaw v. State</i> , 88 SW2d 495 (1935)	
Swindling	<i>Sherman v. State</i> , 62 SW2d 146 (1933)	
Assault by a man against a woman	<i>Hardeman v. State</i> , 868 SW2d 404, 405 (Tex.App. – Austin 1993, pet. dismiss'd)	
Making a False Report	<i>Lape v. State</i> , 893 SW2d 949, 958 (Tex.App. – Houston [14th Dist.] 1994, pet ref'd)	
Indecent Exposure	"his intent to sexually arouse either himself or another, acts upon motives of baseness, vileness, and depravity." <i>Polk v. State</i> , 865 SW2d 627 (Tex.App. – Fort Worth 1993)	
Bigamy		<i>Ruhe v. State Bar</i> , 1994 Tex.App. Lexis 3948, 1994 WL 649395 (Tex.App.—Dallas 1994) (unreported)
Failure to Identify	<i>Lape v. State</i> , 893 SW2d 949, 958 (Tex.App. – Houston [14th Dist.] 1994, pet. ref'd)	
Unlawfully Carrying Weapon		<i>Thomas v. State</i> , 482 SW2d 218, 219 Tex.Crim.App. 1972)
Resisting Arrest		<i>Williams v. State</i> , 449 SW2d 264, 265 (Tex.Crim.App. 1970)
Criminal Mischief		<i>Gonzalez v. State</i> , 648 SW2d 740, 742 (Tex.App. – Beaumont 1983, no pet.)
Criminal Trespass		<i>Hutson v. State</i> , 843 SW2d 106, 107 (Tex.App. – Texarkana 1992, no pet.)
Use of abusive language to police officer		<i>Hartford Accident &amp; Indem. Co. v. Williams</i> , 516 SW2d 425, 428 (Tex.Civ.App. – Amarillo 1974, writ ref'd n.r.e.)
Delivery of a Simulated Controlled Substance	<i>United States v. Ekin</i> , 214 F. Supp. 2d 707, 714-715 (U.S. Dist., 2002)	
Violation of a protective order (misdemeanor)	If the underlying, uncharged offense is one of family violence or the direct threat of family violence. <i>Polk v. State</i> , 865 SW2d 627, 630 (Tex App. – Fort Worth 1993)	

### *Sex Offenders - Special Issues*

Texas - and the nation - have sweeping registration laws for sex offenders. Sex offenders face special issues when it comes to finding a job. First, Texas laws have the effect of restricting registered sex offenders ("registrants") access to the Internet, perhaps the most common method of searching for employment. Second, the Texas Sex Offender Database makes information about these offenses available to everyone, not just larger employers who pay third parties to collect criminal history record information about an applicant.

#### Internet Use

There is no outright prohibition under Texas law preventing registrant's access to the Internet, creating accounts, on web pages on social networking or photo-sharing websites. However, offenders who are on probation or parole often have access to the Internet monitored or restricted as a condition of supervision. Registrants are required to notify DPS of any "online identifiers" within 7 days of creation, and failure to do so is a felony violation. While the registrants "online identifiers" are not publicly disclosed, DPS is permitted by law to forward the "on-line identifiers" to social networking and other approved sites for monitoring.<sup>92</sup>

#### Texas Sex Offender Registration Database

The federal law known as the Adam Walsh Child Protection and Safety Act<sup>93</sup> passed in July, 2006, organizes sex offenders into three Tiers defining the minimum registration periods for sex offenders, with Tier 3, the highest, requiring lifetime registration. Texas law mandates that the registration period *exceed* federal law.<sup>94</sup>

The Sex Offender Registration and Notification Act ("SORNA"), created as part of the Adam Walsh Act requires that this information be made public. Free public access to Texas' database of registered sex offenders is maintained by the Texas DPS. The database information is supplied by local criminal justice agencies, and cannot be verified as accurate without a cross-fingerprint check. DPS disclaims any inaccuracies:

"Extreme care should be exercised in using any information obtained from this website. Neither DPS nor the State of Texas shall be responsible for any errors or omissions produced by secondary dissemination of this information."<sup>95</sup>

It is unlikely that an employer who spots their applicant on the database will go out of their way to request a cross-fingerprint check to verify the accuracy of the database information.



Texas' current (April 2012) list of "reportable conviction or adjudication" sex offenses requiring registration is available from [DPS](#). For a list of registration periods by Texas offense, please refer to

## **Appendix I - Texas Sex Offenses Tiered under Federal Law**

### **Wage and Hour Laws**

#### *Federal Minimum Wage Law*

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards for private sector workers. Workers covered under the FLSA are entitled to federal minimum wage, currently \$7.25 per hour.<sup>96</sup> Overtime pay (for work in excess of 40 hours per week) must be paid at a rate of at least one and one half times the federal minimum wage.<sup>97</sup> The current federal minimum overtime rate is \$10.88 per hour.<sup>98</sup>

#### *Texas Minimum Wage Law*

All workers covered under the FLSA have the right to be paid minimum wage or higher. *The right to minimum wage is a legal right. It cannot be waived by the worker or employer.* Any agreement to be paid less than minimum wage is legally void and unenforceable. Texas has adopted the federal minimum wage rate by reference.<sup>99</sup> If the federal minimum wage rate changes, Texas' minimum wage changes along with it.

#### *Earnings Statement*

Texas law requires employers to provide a written earnings statement to each employee with specific information.<sup>100</sup> An earnings statement can be included on check stub or as a separate written statement. It can also be emailed to the worker to coincide with a direct deposit of wages into the worker's bank account.

The earnings statement must include

- Deductions from pay
- Net wages
- Beginning and ending dates of the pay period.
- Employee name
- Employer's name and address.

### Wages Paid in Cash

A *written earnings statement is required* by law to be provided to the worker every time she is paid, *regardless of the form of payment*. There is no exception for wages paid in cash. Workers should be advised to keep earnings statements and check stubs in a safe place, in case pay or deductions from pay are disputed.

### *Payment Intervals*

An employer must set regular paydays and pay employees on that day. Workers are entitled to be paid at least twice a month, with each pay period being as near as possible to an equal number of days.<sup>101</sup> An employer may pay more than twice a month, but neither the worker nor employer can agree to payment *less* than twice a month.

If the employer doesn't designate the two-week intervals, Texas law presumes that the employer must pay wages on the first and 15<sup>th</sup> day of every month.<sup>102</sup> All work done from the 1st to the 15th of the month must be paid no later than the 26th, and work done from the 16th to the last day of the month must be paid no later than the 10th of the following month.

If entitled to overtime, overtime wages must be paid on the regular payday for the period in which that workweek ends.<sup>103</sup> If overtime cannot be calculated in time for the next pay period, it must be paid no later than the following regular payday.<sup>104</sup>

### *Form and Method of Payment*

Texas law requires employers to pay the worker in dollars by cash, check or by electronic funds transfer. An employee may agree, but only in writing, to have all or part of her wages paid in kind or in another form.<sup>105</sup>

### Releases and Vouchers

It is illegal for an employer to agree to pay any employee on the condition that she signs an agreement releasing the employer from liability for unpaid wages. Any release signed by the worker for this purpose is void on its face, and does not preclude a claim for wages owed. Similarly, an employer cannot pay a worker with a "voucher" or by any means that may be subject to a service charge. Payment must be made in U.S. currency for the amount stated in the written earnings statement.

### Late Pay

There is no grace period or "late pay" for an employer to pay regular wages. "Late pay" is the same as "no pay" under the FLSA. The law requires payment of wages "when due," which

normally means at the next regularly scheduled payday. For overtime pay, an employer can wait until the next payday to pay overtime accrued during the preceding pay period.

#### Wage Dispute No Excuse

If there is a disagreement about the amount of wages owed, the employer still must pay the undisputed amount (the wages the employer acknowledges are due). A worker's claim that more is owed does not give the employer the right to delay the entire paycheck; only the amount in dispute.

### Illegal Deductions from Wages

#### *Written Agreement Required*

Both Texas and federal law allow deductions from wages only if there is a *written* agreement with the employee to do so.<sup>106</sup> The deductions must also be:

- Reasonable,
- Customarily furnished by the employer to the workers, and
- Separately stated and identified on the worker's earnings statement or paycheck.<sup>107</sup>

An employer may not withhold or divert any part of an employee's wages unless the employer:

- is ordered to do so by a court of competent jurisdiction;
- is authorized to do so by state or federal law; or
- has written authorization

An employer may deduct for the following items only if the employee has *consented to it in writing*:

- cash shortages,
- breakage, damage, or loss of the employer's property,
- required uniforms,
- required tools or other items necessary for employment, or
- loans.<sup>108</sup>

A deduction can be illegal even if the worker *has* agreed to it in writing, including agreed deductions for:

- food or lodging in lieu of wages.<sup>109</sup>
- anything that is primarily for the employer's own benefit, such as safety equipment, tools, or uniforms.<sup>110</sup>
- The cost of housing if the housing violates health or safety regulations.<sup>111</sup>
- Funds to make up for paying overtime.<sup>112</sup>
- Cost of work-related travel.

If an employer uses a handbook or policy manual instead of a separate writing, the worker's signed acknowledgment that she has received a copy of the company policies can be authorization to withhold from wages if it meets the above consent requirements. The signed acknowledgment must also include language stating that the worker agrees to the authorization for deduction.<sup>113</sup>

#### Uniforms, Tools and Equipment

Generally, if the use of facilities, equipment and uniforms benefit the employer, the employee does not have to pay for them.<sup>114</sup> The cost of uniforms cannot be deducted from wages if the uniform is required by the employer.<sup>115</sup> Other common employer deductions are illegal if they take an employee's pay below minimum wage. These include deductions to cover the cost of tools, safety equipment, and uniforms that do not fall within the definition of "facilities" under the FLSA; disciplinary deductions (such as "fines" for tardiness), and deductions to cover the cost of items lost or damaged by the employee.<sup>116</sup> Texas law additionally requires all deductions to be authorized in writing by the employee.

### **“No Match” Letters**

The Social Security Administration may inform employers by letter that there is “discrepancy” between the social security number provided by the employer to the SSA and the one the SSA has on file for the employee. The letters is sometimes referred to as a “no match” letter. Its stated purpose is to ensure that the worker receives credit for earnings and benefits administered by SSA. Such "mismatches" could occur from typographical errors, name changes or incomplete information. The “no match” letters specifically instruct employers that the fact that a current or former employee's name appeared in the letter is not any indication of work authorization status, and that the letter alone is insufficient to take adverse action against (i.e. terminate) the employee. Despite these caveats, employers have fired employees on the assumption that the mismatch meant that the employee was not unauthorized to work, exposing them to legal consequences for unlawful termination.

The US Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) provides the following [tips for employees](#) who have been notified by their employer of the discrepancy:

#### What Employees Should Know:

- Name/SSN no-matches can result from simple administrative errors.
- Contact the Social Security Administration (SSA) as soon as possible to update your records following a name change due to marriage, divorce or some other reason.
- Double-check your name and SSN on your Social Security card for errors.
- If you receive a no-match notice or discover an error on your Social Security card, an SSA representative can review it with you.
- Your employer may periodically ask for information on the status of your efforts to address and resolve the no match.

Employees Should Request:

- Notice from their employer of the nature and source of any reported name/SSN no-match.
- An opportunity to review and correct name/SSN errors in employer records.
- Continued employment while addressing and resolving a reported name/SSN no-match.
- A reasonable period of time to gather documents and resolve a reported name/SSN no-match with SSA
- Equal treatment under the employer's policies regarding name/SSN no-matches regardless of citizenship status or national origin.

Employees Should Call OSC's Hotline If An Employer:

- Attempts to immediately re-verify an employee's employment eligibility by requesting the completion of a new Form I-9 based solely on receipt of a no-match notice.
- Terminates, suspends or takes any other adverse action affecting an employee's employment based only on the notice of name/SSN no-match.
- Fails to provide a reasonable period of time for an employee to address and resolve the reported no-match.
- Follows different procedures for different classes of employees based on national origin or citizenship status.
- Requires an employee to produce specific documents to address the no-match.
- Requires an employee to produce specific written evidence from the SSA or any other governmental entity that the no-match has been resolved.

## Federal Bonding Program

Job seekers who committed a fraudulent or dishonest act (crime of moral turpitude), or who have served time are often rejected for employment. The Federal Bonding Program (FBP) is an employer hiring incentive that guarantees employers of persons who have been convicted of a crime involving moral turpitude.<sup>117</sup> The Department of Labor (DOL) provides the Texas Workforce Commission with bonds to provide employers with incentives to hire people with a criminal record.

- Employers receive bonded employees free-of-charge which serves as an incentive to hire hard-to-place job applicants.
- The FBP bond insurance was designed to reimburse the employer for any loss due to employee theft of money or property with no employer deductible.

Additional bonds may be purchased from the bonding agent by organizations providing reentry services. For information on employer participants in the federal bonding program, contact the Texas Workforce Commission, [www.twc.state.tx.us](http://www.twc.state.tx.us).<sup>118</sup>

## Work Opportunity Tax Credit (WOTC)

The Work Opportunity Tax Credit (WOTC) is a Federal tax credit incentive provided to employers for hiring certain groups who face significant barriers to employment. The disadvantaged person is hired and the employer is compensated by being able to reduce their federal income tax liability.

The program used to cover some recipients of public benefits (TANF, SNAP, SSI) recipients, the disabled, and ex-felons (defined as an individual who has been convicted of a felony and has a hiring date which is not more than one year after the last date on which he was so convicted or released from prison.) At present, WOTC credit is *only* available for hiring within the following Veteran's groups.

Disabled veterans with a service-connected disability who have been unemployed for at least 6 months      \$9,600

Veterans who have been unemployed for at least 6 months      \$5,600

Disabled veterans with a service-connected disability      \$4,800

Veterans receiving Supplemental Nutrition Assistance Program (SNAP) benefits      \$2,400

Veterans who have been unemployed for at least 4 weeks      \$2,400

The legislative authority for the WOTC program's non-veteran groups expired on December 31, 2011. Employers are still encouraged to apply but cannot issue determinations if and until the WOTC is authorized by Congress. For more information, contact the [Texas Workforce Commission](#).

## Starting a Business

For people who cannot find work because of their criminal record, another option is to start a business. Composing a business plan, opening a business bank account, and starting with some working capital are all parts of starting a business. The amount of funds (capital) required depends on the type of business. Some businesses require materials and equipment, and others may require a vocational license. Examples of businesses that do not require a vocational license include painting services, lawn care, and carpentry. Others, such as plumbing, may require vocational licenses. whose validity may be affected as a result of conviction. Vocational and occupational licenses are discussed in the next section.

Excellent guidance and information for ex-offenders who wish to start their own business can be found in the publication [Hire Yourself: A Guide to Starting a Small Business for Ex Offenders](#),<sup>119</sup>.

## Child Care

Many parents find it impossible to get a job because they lack child care. Texas offers childcare subsidy (<http://www.twc.state.tx.us/svcs/childcare/>) through local Workforce Development Boards to allow those in need of child care while they work, attend school, or get training for their job. The income-based subsidy covers children age 13 and under.

### *Forming a Child Care Co-Op*

An alternative to seeking a government childcare subsidy or imposing on relatives and friends for child care is to form a child care cooperative. A child care cooperative is made up of a number of families in a community who share child care among the group. No money is exchanged. Points are earned by providing care for children of a member family. Points are spent by having a member parent care for another member family's children. A secretary who keeps track of the points or credits could be "paid" for this task by extra credits or points. The

co-op members can “pay” a member in points to act as secretary and record- keeper, or to arrange the childcare scheduling among the co-op members.<sup>120</sup>

## Temporary Employment and Staff Leasing

Individuals with a criminal history who find it difficult to secure employment often turn to temporary staffing agencies. These agencies can be a good place to start, but the job seeker should be sure to ask about fees and hidden costs associated with placement, and compare their wages with what the agency charges to the employer. Some job placement agencies misrepresent their services, promote outdated or fake job offerings, or charge high fees for services that may not lead to a job.

### *Considerations for Job Placement Firms*

Before spending money on a job placement service or signing a contract, the Federal Trade Commission (FTC) recommends the following:<sup>121</sup>

- Reject any company that promises a job.
- Be skeptical of any employment-service firm that charges first, even if it guarantees refunds.
- Get a copy of the firm’s contract and read it carefully before paying any money. Understand the terms and conditions of the firm’s refund policy. Understand what services the firm will provide and what you’ll be responsible for doing.
- Take time to read the contract and avoid high-pressure sales pitches that require payment immediately or risk losing out on an opportunity.
- Avoid purchasing services or products from a firm that’s reluctant to answer questions.
- Note that listing services and “consultants” can write ads to sound like a job when they are selling general information about getting a job.
- Follow up with the offices of any company or organization mentioned in an ad or an interview by an employment service to find out if the company is really hiring.
- Be wary of firms promoting “previously undisclosed” federal government jobs. All federal positions are announced to the public on [www.usajobs.gov](http://www.usajobs.gov).

## Day Labor<sup>122</sup>

“Day laborers” are people employed on a temporary, day-to-day basis, normally working in construction, light manufacturing, landscaping and other similar jobs. Day laborers find work



either through a temporary day labor agency (or labor hall) or by waiting on a designated street for an employer to arrive and hire workers as needed. Workers often do not know from day to day whether they will get work.

Day laborers have problems that are unique to the nature of the short term temporary work they perform. Among them:

- Employers wishing to minimize costs and increase flexibility
- One "employer" (the day labor agent) hiring and paying the worker and another "employer" (at the work site) directing the work
- Lack of union representation
- Workers' immigration status and lack of work authorization

Despite the non-standard nature of the day labor employment relationship, day laborers are entitled to the benefit of minimum wage and overtime laws. In summary,

- If workers are **waiting** at a designated place at the employer's request, they should generally be paid for the waiting time.
- Generally, **deductions** that do not bring the hourly wage below the federal minimum wage are permissible.
- Deduction of fees for **transportation** to the work site is generally allowed. However, if the transportation is part of and necessary to the employment, deductions may not bring the hourly wage below the federal minimum.
- The cost of **safety equipment** or **tools** required for a job generally should not be deducted from wages if the deduction reduces the wage below the minimum level.
- If accepting **meals** is voluntary, the meals are generally considered to be for the benefit or convenience of the employee and the reasonable cost can therefore be deducted from the employee's wage whether or not it reduces the wage below the minimum.
- If a **check cashing** service is voluntary, it could be considered primarily for the benefit of employees and therefore a fee could be deducted from the wages even if that deduction reduces the wage below the minimum.

### *Day Laborers' Rights Regarding Wages and Hours*

Two areas where day laborers are vulnerable to employers' wage and hour violations involve waiting time and wage deductions.

### *Waiting Time*

Employers take advantage of day laborers in numerous ways, including payment of low wages and requiring workers to wait without any promise of work at all.

Because workers are usually free to stay or go as they wish prior to getting an assignment, courts typically do not find an employment relationship before a job is assigned. It is therefore more difficult to get wages paid for the period between arriving at the labor hall, or job pick-up site, and the time the job is assigned.

But, if a worker is required to report for work at a specified time, either at the day labor agency or at the worksite, the workday commences at that point even if the worker has to wait until a later time for the actual work activities to begin. If the worker has to report and wait each day for the same job over a number of days, it is easier to recover waiting-time pay.

### *Deductions from Wages*

A worker's pay can be made up of a combination of wages and other benefits. In some circumstances, an employer can legally make deductions from a worker's wages. The general rule under federal law is that deductions are generally permitted as long as they do not bring the hourly cash pay below the federal minimum wage. Federal law only regulates deductions that bring the "cash" component of a worker's wages below the minimum wage.

Federal law allows deductions that *do* cut into the minimum wage, provided the following six requirements are met:

1. the employee actually and voluntarily received the benefit;
2. the benefit was not furnished primarily for the benefit or convenience of the employer;
3. the benefit was not furnished in violation of any federal or state law;
4. the deduction is provided at a reasonable cost;
5. the payment of non-cash wages is not prohibited by a union agreement;
6. the benefit is customarily provided to employees. That is, the items must be provided regularly or similar items must be provided by other employers in similar businesses in comparable geographic locations.

### Fees for Transport

Day laborers are often provided with transportation between the work hall, or pick-up location, and the work site. Employers frequently deduct an amount from the employees' wages for providing transportation. If the transportation is part of and necessary to the employment, transportation deductions cannot bring workers' wages below the minimum. In federal courts, travel by day haul workers in a contractor's bus from a recruitment site to the fields is normally not compensable time, in the absence of some work-related activity at the recruitment site or during the trip.

### Essential Tools and Safety Equipment

These items should generally not be deducted from wages, if the deduction reduces the wage below the minimum level, for the following reasons:

1. such deductions should be regarded as primarily for the benefit or convenience of the employer;
2. uniforms are not deductible if they are required by law, by the employer, or by the nature of the work performed. Examples of safety equipment include gloves, hard hats and boots. These items should be regarded as necessary for the benefit or convenience of the employer if they are required to safely perform the work asked of the worker. The use of such safety items might also be required by law and could then be considered uniforms.

### Meals

If accepting meals is voluntary, the meals are generally considered to be for the benefit or convenience of the employee and therefore the cost can be deducted from the employee's wage whether or not it reduces the wage below the minimum. The amount deducted is restricted to the reasonable cost of the meal (the lesser of the actual cost and the market value of the meal).

### Check Cashing

If the service is voluntary, it could be considered primarily for the benefit of employees and therefore a fee could be deducted from the wages. Federal law requires that wages (up to the minimum wage) be paid "free and clear."

### *Compliance with other Labor Laws*

Employer abuse can take other forms. One survey showed that almost half of all day laborers experienced at least one instance of wage theft in the two months prior to being surveyed. Forty-four percent were denied food, water or breaks while on the job. One third of

the day laborers surveyed had been abandoned on the job, and one-quarter of the workers had suffered violence at work.<sup>123</sup> Redress for these and other day labor grievances depend on state and local laws.<sup>124</sup>

## Employment and Social Media

In addition to criminal history background checks, employers routinely check the social media sites (like Facebook) of prospective or current employees. Anyone applying for a job should consider the likelihood that an employer has already read - or will read - the applicant's Facebook page or conduct a Google search of the person's name.

Job hunters with social media accounts should

- review their social media page and delete any information they think might be prejudicial in an employment setting.
- Make sure that appropriate privacy settings are in place. Unless the privacy options are selected, the page defaults to public access. Privacy requires action from the holder of the account.

Even applicants who have been careful enough to use Facebook's privacy settings are vulnerable to uninvited observers. Companies like Social Intelligence Corporation (SocialIntel)<sup>125</sup> are hired by employers to do a "credit check" of an applicant's or employee's social-media activity, collect information and provide it to potential employers.

A disturbing trend among some employers is to ask prospective job applicants for their passwords to social media sites like Facebook. An employer may even ask a prospective employee for access during the job interview. An interviewee should not be required to "voluntarily" turn over their passwords in order to be considered for a job, or as a condition of maintaining a job. If an employer asks for this information, the applicant can

- Ask the employer if revealing the password is something that is required to move forward with this job interview
- Tell the employer that he is careful with his personal, private online information and does not feel comfortable giving out any passwords

An employer's demand for access to a prospective employee's private medial pages may violate existing anti-eavesdropping and privacy laws, as well as federal statutes relating to unauthorized access to computers and electronically-stored information<sup>126</sup> Because the law in this area is still in flux, the best course for the job seeker is to clear up his media page(s), apply

the privacy settings, and refrain from posting anything that he would not want the employer to see.

## Job Scams

### *Work at Home Schemes*

Fraudulent promoters use classifieds and the Internet sites to advertise of work-at-home offers, from medical billing and envelope stuffing to assembly and craft work. The ads make promises about earnings, merchandise, or marketability that are not always accurate. According to the Federal Trade Commission, here are some work-at-home jobs to avoid:<sup>127</sup>

Envelope Stuffing. The job promises work stuffing envelopes at home for a "small" fee. Once the fee is paid the promoter will not have work but try to get the worker to recruit friends and relatives to buy the same envelope-stuffing "opportunity."

Assembly or Craft Work. Ads promise money for assembling crafts or other products at home. Often these require the worker to invest in equipment or supplies, like a sewing or sign-making machine, or other materials. Once the materials are purchased and the product is made, the company will not pay for the product.

Rebate Processing. Promises to generate income by helping to process rebates. The work involves payment of a fee for training, certification or registration materials and no rebates to process.

Online Searches. Income is generated by running Internet searches on prominent search engines and filling out forms in exchange for a small handling fee paid online. These scams use financial information to charge recurring fees.

Medical Billing. This scam usually involves an investment by the worker of hundreds of dollars to launch a medical billing business, along with software and technical support. The work is often not available. Many doctors' offices process their own medical claims, and doctors who contract their billing use well-established firms, not someone working from home.

### **Resources**

[Ready4Work](#) - coalition of faith-based and community nonprofit organizations and corrections officials working for sustainable ex-offender reentry and employment.

To check for complaints about a specific company or business:  
Companies can be screened through a [local consumer protection agency](#), state [Attorney General's Office](#), and the [Better Business Bureau](#) to see if any complaints are on file.

U.S. Department of Labor, Employment Information Handbook for Ex-Offenders, available at: <http://www.doc.state.nc.us/Publications/DOL.Exoffender.Handbook.pdf>.

The National H.I.R.E. Network is a resource for formerly incarcerated people seeking to re-enter the workforce: <http://www.hirenetwork.org>.

U.S. Department of Labor Civil Rights Guidelines Governing Background Checks and Federally-Funded Workforce Development Programs  
[http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9230](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9230)

U.S. Equal Employment Opportunity Commission Guidelines on Use of Arrest and Conviction Records for Employment [http://eoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://eoc.gov/laws/guidance/upload/arrest_conviction.pdf)

U.S. Reentry Council, [Reentry MythBusters](#)

National Reentry Resource Center <http://www.nationalreentryresourcecenter.org/>

Community Legal Services and National Employment Law Project [Highlights of EEOC Guidance](#)

No Match Letters and discrimination based on nationality  
[Office of Special Counsel:](#)  
1-800-255-7688/1-800-237-2525 (Hearing Impaired/TDD)

[Excluded Worker's Congress](#)

national networks of organizations that represent workers excluded from the right to organize in the United States. Each network represents a different industry, sector, or kind of work.

[Texas Voices For Reason and Justice](#) Statewide non-profit promoting a more balanced, effective, and rational criminal justice system. for persons required to register for sex related offenses and their families. For a Texas Voices brochure, click [here](#).

## 5. Vocational Licenses

Renewing, maintaining, or applying for a vocational license<sup>128</sup> is important for formerly incarcerated workers because it shows employers that they have received specialized training in a particular field. The training typically culminates in an examination, which, if passed, results in the award of a vocational license. A vocational license usually results in better employment opportunities and better pay. Prison-based programs include training to become an electrician, truck driver, or cosmetologists (which require licenses) to welder and carpenter (which do not).

State law governs some areas of the licensing process as it relates to criminal convictions, but each licensing authority is generally free to create its own rules and standards for the profession it regulates. This includes internal rules for license application, renewal, disqualification and revocation. Whether a criminal background will bar an applicant from obtaining a license depends to a large extent on the profession.

This section addresses the effect of a criminal conviction on a person's ability to apply or renew a vocational license for an occupation that falls under the jurisdiction of the Texas Department of Licensing and Regulation (TDLR).<sup>129</sup> Professions such as law and medicine are not regulated by the TDLR but have their own licensing entities and rules regarding applicants with a criminal history.

A criminal conviction does not automatically prohibit a previously incarcerated person from obtaining an occupational license. The TDLR reported that 14% of all applicants for an electrician's license had criminal convictions, but only a third of those were denied a license based on a prior conviction.<sup>130</sup>

### Texas Department of Licensing and Regulation

The Texas Department of Licensing and Regulation (TDLR) is the state's umbrella agency responsible for overseeing most licensed occupations. It regulates businesses, industries, general trades, and occupations that are regulated by the state and assigned to the TDLR for oversight. The TDLR is also responsible for deciding if the rules of a licensing authority unlawfully restrict or bar people who have been convicted of a crime from obtaining a license.

### *Occupations Regulated by the TDLR*

The ability of ex-offenders to hold occupational licenses is restricted by the TDLR in over 100 different licensed occupations, ranging from plumber to electrician to dietician.<sup>131</sup>

Lawyers, doctors, accountants and other professions are governed by other state agencies and laws. The Texas Medical Board controls licensing of most health care related occupations; pharmacists, veterinarians, peace officers, and emergency medical services personnel each have separate licensing agencies. The TDLR regulates the following occupations and industries:

#### **OCCUPATIONS AND INDUSTRIES REGULATED BY TEXAS DEPT. OF LICENSING AND REGULATION**

Air Conditioning and Refrigeration	Personnel Employment Services
Architectural Barriers	Polygraph Examiners
Auctioneers	Property Tax Consultants
Barbers	Property Tax Professionals
Boiler Safety	Service Contract Providers
Combative Sports	Vehicle Protection Product Warrantors
Court Interpreters	Staff Leasing Services
Cosmetologists	Talent Agencies
Electricians	Temporary common Worker Providers
Elevator/Elevator Safety	Tow Truck Operators
For-Profit Legal Services	Vehicle Storage Employees
Identity Recovery Service Contract Providers	Used Auto Parts Recyclers
Industrialized Housing and Buildings	Weather Modification
Loss Damage Waivers	Water Well Drillers and Pump Installers

### *Incarceration - Automatic Revocation*

Automatic revocation is a matter of state law and cannot be appealed to the TDLR. A person who is incarcerated because of a felony conviction is not eligible to obtain or renew a license from the TDLR. If a person already has a license, it will be automatically revoked under two circumstances:

- If the person is convicted of a felony *followed by imprisonment*.
- When the person's parole or mandatory supervision is revoked.<sup>132</sup>

The automatic revocation is not a lifetime ban. If a license is revoked by operation of law<sup>133</sup> the person must wait until release from imprisonment before applying for a new license.



Aside from automatic revocation, any person with a criminal record can apply to the TDLR for a license. The TDLR has discretion to deny or accept the application, but certain rules apply to the application process and how it will be considered once submitted.

## **TDLR Application Process**

### *First Time License*

Each occupation has its own application requirements and fees.<sup>134</sup> A person seeking a license for the first time must complete the TDLR's application form, pay the application fee, and complete all requirements for the occupation within one year of applying. If the license requirements are not completed within a year, the person must reapply.

### *License Renewal*

To renew a license, a person must apply for renewal before the current license expires. The TDLR may run a criminal background check at the time of renewal to reveal offenses that may have occurred since the license was issued or that were not reported at the time of the original application. If the license has been expired for more than one year, it cannot be renewed, and a new application must be submitted.

### *Criminal Background Check*

Depending on the license sought, the TDLR's Licensing Division will run a criminal background check through the Department of Public Safety (DPS) on each application for a license or application for renewal. If a person's criminal history is an issue, the application is referred to TDLR staff for further review. If the recommendation is to grant the license, the file is returned to the Licensing Division. If the application is denied, the TDLR will send the applicant a letter that identifies the offenses that form the basis of the denial. The applicant has a right to appeal the decision. Criminal background checks are part of the licensing process. People with criminal histories should review their criminal records *before* starting the license application process with the TDLR. A seemingly extensive criminal history can be considerably shortened if entries unrelated to conviction are eliminated. Errors should be corrected, if possible; arrests that did not result in conviction may be expunged, and nondisclosure may be requested for eligible offenses. For information on expunction and nondisclosure of criminal history records, please refer to part 3. **Expunction, Nondisclosure, and Pardon.**

### *Request for Criminal History Evaluation Letter*

Anyone applying for a license through TDLR can request a "criminal history evaluation letter." The TDLR will perform a preliminary criminal history evaluation and provide the results before the individual applies for a license. The letter offers some insight into how the TDLR might evaluate a person's criminal history if an application were filed. By obtaining an evaluation first, an applicant can make an informed decision about whether to apply for a license before devoting time and resources to training for that occupation.<sup>135</sup> To request a criminal history evaluation letter, the applicant must:

- submit a determination of eligibility [request form](#). There is a different form for each occupation.
- complete a [criminal history questionnaire](#) for each conviction or placed on deferred adjudication, and
- pay a \$25.00 fee.

The TDLR will issue a criminal history evaluation letter within 90 days of receiving a complete request. The letter will state whether the TDLR would or would not recommend granting a license based on the information provided by the requestor. The letter is a recommendation only, and only for a specific occupation. It is not binding or final, and regardless of the results, a person can proceed with a formal license application at any time.

### *Consideration of Deferred Adjudication*

Although an offense resulting in deferred adjudication is not a conviction, the TDLR is permitted to consider it when making a decision on a licensing application.<sup>136</sup> Applicants must include all offenses in the licensing application, including those that resulted in deferred adjudication. Omitting them from an application can hurt an applicant's prospects, because the TDLR has the ability to run the applicant's criminal history record to verify the information provided.

The TDLR cannot consider a deferred adjudication as the sole basis for rejection or renewal of a license, unless the TDLR decides that:

1. the person may pose a continued threat to public safety; or
2. employing the person in the licensed occupation would create a situation in which the person could repeat the prohibited conduct.

A rejected applicant can appeal if the rejection appeared to be based on grounds unrelated to public safety or repeated prohibited conduct.

*TDLR Evaluation of Application*

In deciding whether the license should be granted, the TDLR is supposed to consider:

- the nature and seriousness of the crime;
- the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- the extent to which a license might offer an opportunity to engage in the same type of criminal activity in which the applicant was previously involved; and
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

The TDLR will also evaluate the applicant's fitness to perform the duties and discharge the responsibilities of the licensed occupation by considering:

- the extent and nature of the applicant's past criminal activity;
- the applicant's age when the crime was committed;
- the amount of time that has elapsed since the applicant's last criminal activity;
- the applicant's conduct and work history before and after the criminal activity;
- evidence of the applicant's rehabilitation or rehabilitative effort while imprisoned or after release; and
- other evidence of the applicant's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff or chief of police in the community where the applicant resides; and any other person who has had contact with the applicant.

*TDLR Grounds for Denial*

By law,<sup>137</sup> the TDLR is permitted to deny, suspend or revoke a license if the crime is:

1. an offense that directly relates to the duties and responsibilities of the licensed occupation;
2. an offense that does not directly relate to the duties and responsibilities of the licensed occupation but was committed fewer than five years before the person applies for the license;
3. an offense for which a person is not eligible for probation or community supervision; or
4. sexually violent offenses, as defined by Article 62.001 of the Code of Criminal Procedure.<sup>138</sup>

### *"Directly Related"*

A potential applicant cannot be disqualified unless the TDLR can show that the applicant's offense is "directly related" to the duties and responsibilities of that occupation. The term "directly related" can be so broadly defined that it can be made to include virtually all offenses. Persons convicted of theft or burglary, for example, may be prevented from holding an electrician's license because electricians "have access to private residences and businesses, where they may come into direct contact with unattended property." The disqualification decision based on "direct relationship" grounds can be appealed to the TDLR.

Regardless of whether there is a "direct relationship" between the offense and the occupation, the TDLR may deny an applicant if it has been less than five years since the commission of the offense. The time runs from the date the offense was *committed*, not from the date of conviction.

### *Appeal*

If an application is denied, it can be appealed to an administrative law judge in the State Office of Administrative Hearings (SOAH).<sup>139</sup> The TDLR will schedule a hearing and send a notice of the hearing date and time to the applicant. It is helpful to have attorney assistance at the hearing; contact an attorney or the local legal aid office for help.

At the hearing, the applicant can offer testimony and written evidence to an administrative law judge to support why the license should be granted. Following the hearing, SOAH will issue a proposal for decision. The decision is not binding on the agency unless the board rules state that they will be bound by SOAH's decisions. If licensing board decides not to adopt a favorable decision from SOAH, the adverse decision can be appealed to state court.<sup>140</sup>

The process is the same where an offense is revealed after the license is granted. In the case of renewal, the decision will be whether the license should be suspended or revoked instead of whether to grant or deny.

Evidence for the hearing can be anything that might help alter the decision to deny. This can include information probation or parole officials but should also show that the applicant has:

1. been steadily employed;
2. supported his or her dependents;
3. maintained a record of good conduct; and
4. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case.

## TWIC

TWIC is the identification credential for anyone that requires unescorted access to secure areas of Maritime Transportation Security Act (MTSA). Individuals who meet TWIC eligibility are issued a credential based on fingerprint information.

### *People Who Must Get a TWIC*

Coast Guard-credentialed merchant mariners, port facility employees, long shore workers, truck drivers, and others requiring unescorted access to secure areas of maritime facilities and vessels regulated by the MTSA. More information and resources are available on the official TWIC Program web site ([www.tsa.gov/twic](http://www.tsa.gov/twic)) and through the TWIC help desk (1-866-DHS-TWIC).

## 6. Transportation and Driving Privileges

Access to transportation is another important aspect of successful re-entry. Transportation is essential to maintaining a job outside of the home. Without an effective network of public transportation, formerly incarcerated Texans, especially those outside of the major cities, are seriously disadvantaged if they have lost driving privileges.

The [Texas 2-1-1 website](#) has a searchable database by city and county of local social services and faith based organizations that offer assistance with basic needs, including transportation. For some previously incarcerated people, the ability to access transportation depends upon restoring their driving privileges. Texas law imposes driver license suspensions of varying duration depending on the offense for which the person was convicted.

This section addresses driver's license suspensions, the Texas Driver Responsibility surcharge program, and the process to obtain an occupational driver's license to allow limited driving privileges for a particular purpose.

### Suspension of Driver's License

The Texas Department of Public Safety's website enables drivers to check the status of their driver's license online. Visit <http://www.texas.gov>, click on the driver's services button, then the driver's license reinstatement and status button and enter the information.

#### *Refusing or Failing Blood or Breath Test*

If a person refuses or fails a blood or breath test following an arrest for driving while intoxicated, his license can be suspended for 90 days up to 2 years. A reinstatement fee of \$125 will be required prior to the renewal/issuance of a driver license. The license suspension period varies by court order not to exceed two years. A conviction for driving while intoxicated under the age of 21 will result in an automatic suspension for one year. A reinstatement fee of \$100 will be required prior to the renewal/issuance of a driver license. Other requirements include:

- Proof of insurance (form SR-22) from insurance company. The SR-22 is required for two years from date of conviction.

- Certificate of completion of DWI education program, if required by the convicting court, which must be forwarded to DPS before the suspension period expires to avoid a revocation.

### *Drug Offenses*

A person's license is automatically suspended upon final conviction of a drug offense (which does NOT have to occur while operating a motor vehicle). The suspension period is 180 days. In addition, a drug education program is automatically required and must be completed within the 180-day suspension period or the license remains suspended until the certificate of completion is received by the Texas Department of Public Safety. Proof of insurance (Form SR-22) is required, along with a \$100 fee to have the driver's license reinstated.

### *Traffic Violations*

A person's driver's license is subject to suspension for excessive traffic violations, depending on the number of violations within a one or two year period. Suspension can occur if, within:

12 months - driver has 4 or more moving violations

12 months - if under 18, 2-4 moving violations

24 months - driver 7 or more moving violations.

Payment of a \$100 fee is required to reinstate, renew, or issue a driver's license following suspension.

### *License Suspended or Invalid*

The offense of "Driving While license Invalid (Suspended)" is a misdemeanor carrying a fine of up to \$500 and confinement of up to six months in the county jail.<sup>141</sup> A person who drives while his license is under suspension, revocation, or cancellation is subject to an additional license suspension for the same period of time as the original suspension. The suspended license cannot be renewed or reissued until the required \$100 reinstatement fee paid. A person convicted for this offense must also obtain and file proof of insurance (form SR-22), and maintain the insurance for two years from date of conviction.

### *Violation of License Restriction*

A person who has been convicted of two or more violations of a driver license restriction/endorsement is subject to license suspension. A \$100 reinstatement fee is required prior to the renewal/issuance of a driver license.

## Out-of-State Driving Offenses

### *Suspended in another State*

A person who has a suspended driving status in another state cannot obtain a Texas driver's license. If the Texas Department of Public Safety issues a Texas license and later learns of an adverse driving status in another state, the Texas license is subject to cancellation. The driver must obtain a clear status from that state's driver licensing agency. Once the driving record is cleared in the other state, the person seeking to clear his driving record must contact Texas DPS Headquarters to have the clearance applied to the Texas driver record. The documents must be from the driver licensing agency in the other state. Court documents from another state will not be accepted as proof of compliance.

### *Unpaid Traffic Fines in another State*

The Texas Department of Public Safety may revoke a person's license if the person has not complied with the terms of a traffic citation received in another state. To have your license reinstated, proof of payment for the out of state citation must be submitted to DPS. Proof of payment includes receipt from court, copy of money order or cashier's check, or copy of cancelled check (front and back). A reinstatement fee will also be required prior to the renewal/issuance of a driver license.

### *Offense from another State*

Texas DPS may suspend a person's license upon receipt of a notice of conviction of an offense committed in another state that, if committed in this state, would be grounds for suspension. Examples of offenses that result in suspension of a Texas driver's license are listed in the table below:<sup>142</sup>

**Table: Offenses Resulting in Suspension of Driver's License**

The table below sets forth specific offenses that result in suspension of the offender's driver's license

Offense	Restriction
Graffiti §28.08 Tex. Penal Code	Discretionary one year suspension for conviction or probation Tex. Transp. Code §521.320



Racing §545.420(a) Tex. Transp. Code	Mandatory one year suspension. If under 18 must perform 10 hours of community supervision and can have an occupational license only for attendance to school. Tex. Transp. Code §521.350 .
Acquiring motor fuel without payment-theft, §31.03 Tex. Penal Code	Coupled with an affirmative finding pursuant to Art. 42.019 Tex Code Crim. Proc.- automatic 180 suspension first offense, 1 year for second offense. §521.349 Tex. Transp. Code.
Furnishing alcohol to a minor, §106.06, Alcohol Beverage Code	Automatic 180 day suspension first offense, 1 year second offense. §521.351 Tex. Transp. Code
Possession of fake driver's license, allowing another to use one's driver's license, possessing more than one driver's license, falsifying information on an application for a driver's license, or use of a driver's license to represent one is over 21 when they are not, §§521.451, 521.453, Tex. Transp. Code	Mandatory but duration determined by the court, suspension for not less than 90 days nor more than 1 year. §521.346 Tex. Transp. Code
Fake license plate or Safety inspection certificate, §502.409 (a)(4) and §548.603(a)(1) Tex. Transp. Code	Automatic 180 days suspension. §521.4366 Tex. Transp. Code
Criminally negligent homicide (with a motor vehicle) § 19.05, Tex. Penal Code, and any state jail felony with a motor vehicle offense involving personal injury or death	Automatic one year suspension. §521.341 Tex. Transp. Code,
Evading arrest or detention §38.04,	Automatic one year suspension. §521.341 Tex. Transp. Code;
Intoxication assault §49.07,	Automatic one year suspension. §521.341 Tex. Transp. Code;
DWI with a child passenger §49.045	Automatic one year suspension. §521.341 Tex. Transp. Code;
Intoxication manslaughter §49.08	Automatic one year suspension. §521.341 Tex. Transp. Code;
Tampering with a government record-motor vehicle registration or license plate § 37.10 Tex. Penal Code	Automatic two year suspension. §521.346 Tex. Transp. Code;
DWI (minor under 21) §49.04 Tex. Penal Code	Automatic 1 year suspension §521.344 Tex. Transp. Code. Tex. Code Crim. P. art. 42.12 § 13(n)(1) - 90 day to one year suspension if set by the court. Note: DPS automatically suspends for one year, unless vehicle equipped with an ignition interlock device; §521.342 Tex. Transp. Code
Purchase or attempt to purchase, possession or consumption of alcohol by a minor §106.071 Alcohol Beverage Code	Automatic 30 days suspension first offense unless deferred, 60 days second offense, 180 days. third offense. Prior order of deferred disposition is considered a conviction for enhancement purposes. § 106.071(f)(2)

Drug offenses under the Texas Controlled Substance Act	Automatic 180 days minimum suspension, must complete drug education program before suspension lifted. §521.372 Tex. Trans. Code Offenders under 21 - suspension from 180 days up to 1 year §521.342 Tex. Transp. Code
Multiple traffic violations, Tex. Trans. Code §521.292; 37 Tex. Admin. Code §15.82	Suspension
Offenses involving commercial driver's license, Tex. Transp. Code §522.081; 37 Tex. Admin. Code §15.82	Suspension
Certain Sex Offenses, Tex. Trans. Code §521.348	If required to register per Ch. 62 Tex. Code Crim. Proc. and fail to apply for a renewal per Tex. Code Crim. Proc. art. 62.060, license revoked until driver comes into compliance.

### Driver Surcharges

People convicted of certain driving offenses, or whose licenses were suspended after September 1, 2003, are required to pay a monetary surcharge.

Drivers who receive a conviction for one of the offenses below are required to pay an annual surcharge for a period of three (3) years from the date of conviction.

**Table: Driver Surcharges**

Type of Conviction	Surcharge <i>Per year for 3 years</i>
1st Driving While Intoxicated (DWI) Offense Texas or out-of state conviction	\$1,000
Subsequent DWI Texas or out-of state conviction	\$1,500
DWI with blood alcohol concentration of 0.16 or more Texas or out-of state conviction	\$2,000
No Insurance	\$250
Driving While License Invalid For example: license is canceled, suspended, or revoked	\$250
No Driver License For example: no driver license, expired license, no commercial driver license, or endorsement violations	\$100

### *Deadline for Surcharge Payments*

The driver who must pay a surcharge will receive a notice from DPS to the address DPS has on file. The surcharge must be paid in full or an installment paid within 30 days of receipt of the notice, or the person's license will be automatically suspended. It will remain in suspension until all surcharges, costs, collection and reinstatement fees are paid in a lump sum or through an installment plan.

#### How to Look Up Surcharges

If a person subject to a surcharge has moved without notifying DPS of the new address, or does not receive the DPS notice of surcharge for some other reason, the driver may be unaware that her license has been suspended for failure to pay the surcharge within the 30-day window. A driver can find out if any surcharges are outstanding by visiting <http://www.txsurchargeonline.com>. Click the online services button and enter the requested information.

Texas DPS outsources the surcharge collection to a private vendor. The vendor's collection fees, which are added to the surcharge, can include:

- A service fee of 4% of the original surcharge amount.
- An installment plan payment fee of \$2.50 per partial payment.
- A credit/debit card fee of 2.25% of payment plus \$0.25 (except where prohibited by law).
- An electronic check fee of \$2.00 per payment.

A person convicted of their first DWI who pays in monthly installments without using electronic check or debit/credit card will, over the course of the required three years, pay \$3210.00: \$3000 for the surcharge, a \$120.00 service fee, and \$90.00 in installment payment fees.

### *Driver Surcharge Indigence Program*

The surcharge program went into effect on September 1, 2003. It failed spectacularly in anticipated collections. Drivers with intoxication offenses simply could not pay the \$1000 to \$3000+ annually, and the collection agency to which the fees were to be paid frequently erred in properly and timely crediting payments that were made. Many individuals had their driver's license automatically suspended without their knowledge, either because the notice of suspension had not been sent to the driver's current address or because surcharge payments were not accurately credited.

In 2004 the Texas legislature authorized an [indigency program](#) to allow drivers at or near the federal poverty level to pay a reduced surcharge. Under the program, the surcharges are reduced, not waived. Features of the surcharge indigency program:

- It applies only to people living at or below 125% of the federal poverty level. In 2012, for example, a single person in Texas could qualify with an annual income at or below \$13,962.50.
- The driver must complete an affidavit supplied by DPS and sign it before a notary.
- If the person is eligible, the surcharge will be reduced to 10% of the total owed, not to exceed \$250.
- Driving privileges will not be suspended while payments are being made.
- The driver will have 18 months to pay off the reduced amount. If the amount is not paid off on or before the expiration of the due date the license will be automatically suspended again.
- If a new surcharge is assessed within 90 days of enrollment in the indigency program. it will automatically be reduced.
- If a surcharge is assessed after 90 days, the driver would have to complete a new indigency affidavit to have that surcharge amount reduced.”

For information on the indigency program and the form for affidavit, please refer to

### **Appendix J: Surcharge Indigency Affidavit and Instructions**

## **Occupational Driver’s License**

An occupational license is a special restricted license issued to persons whose license has been suspended or revoked for certain offenses (other than medical reasons or delinquent child support). It does not apply to commercial driver’s licenses. The occupational license authorizes driving privileges to a person whose license has been suspended if driving is necessary for the person’s occupation, educational purposes or in the performance of “essential household duties.” This means that the individual requesting the license must be able to demonstrate that they need to drive to and from a job, school, or for some other compelling reason.

### *Form SR-22 - Proof of Financial Responsibility*

The individual must have the SR-22 before the hearing on the occupational license. Tex. Transp. Code §521.244(c) requires the petitioner for an occupational license to present to the

Judge proof of financial responsibility. The proof of financial responsibility is commonly known as form SR-22. The occupational license holder is required to file and maintain a Form SR-22 with DPS. Some features of the SR-22:

- An insurance card or policy IS NOT accepted in place of the Form SR-22.
- Form SR-22 insurance is mandatory for a period of two (2) years from the date of conviction.
- Form SR-22 is a 'certificate of insurance' that shows DPS proof of insurance for the future. It is motor vehicle liability insurance that requires the insurance company to certify coverage to DPS. The insurance company must notify DPS anytime the policy is cancelled, terminated or lapses.
- The form SR-22 must be purchased from an insurance agent. The driver does not need to own a vehicle to buy this type of insurance. If the driver does not own a vehicle, they can obtain a non-owner Form SR-22.

#### Minimum Liability Amounts in Texas

Minimum liability coverage amounts in Texas are

- \$30,000 for bodily injury to or death of one person in one accident,
- \$60,000 for bodily injury to or death of two or more persons in one accident,
- \$25,000 for damage to or destruction of property of others in one accident.

The [Texas Department of Insurance](#) has more information about minimum liability insurance laws.

#### *Court Order Required*

The request for an occupational license is made to the county or district court in county where the person resides, or the court where the offense occurred. If approved, the request will result in a court order granting the license. Note that the court order itself is not the actual occupational license. The order granting the license is the part that must be submitted to DPS in order to get an occupational license issued.

The driver must present a *certified* copy of the court order granting the occupational license to DPS. A certified copy bears the court's stamp on every page to certify that the paper is identical to the original. Certified copies can be obtained from the clerk's office where order was filed, and typically run about \$1 per page, payable to the clerk of the court. Depending on the court, the judge may grant the order authorizing the issuance of an occupational license on its own motion, without a petition or request from the person seeking the occupational license. While the waiting for DPS to process the application for an occupational license, the driver may

use the court order in lieu of the license for thirty (30) days from the date the order was signed without violating the law.

Even after the license is issued, however, the driver must keep a copy of the order on his person while driving because it is the order which advises law enforcement when it is ok for the driver to drive. Tex. Transp. Code §521.250.

#### *Application to DPS for Occupational License*

Once the order on the occupational license has been granted and applicant has obtained a certified copy, the applicant must:

1. Submit an original Form SR-22 certificate of insurance. This is the only proof of insurance acceptable.
2. Pay an [occupational license fee](#) for a one-year license or less. If the license needs to be extended, the applicant must seek court authorization. The maximum duration of an occupational license, with extensions, is 2 years.
3. Payment of all required [reinstatement fees](#).  
A [reinstatement fee](#) will be required prior to the renewal/issuance of a driver license.

#### **Resources**

Self-help court forms and instructions for Occupational License - see Texas Law Help, [Getting an Occupational Driver's License in Texas](#)

## 7. Offense – Related Debt

Criminal debt can be a serious financial roadblock for a person experiencing reentry following a period of incarceration. Individuals with a criminal history are already at a disadvantage in the employment arena. One study showed that defendants placed on felony probation owe between \$4000 and \$5000 in offense-related debt, not including child support, and that the same group had an unemployment rate of around 40%.<sup>143</sup> There are at least three dozen fees and costs that can be assessed depending on the crime and the jurisdiction.<sup>144</sup> Because one in three dollars raised through these costs and fees is spent on projects outside of the court system, some have argued that they are an undeclared general tax that is unconstitutional.<sup>145</sup>

### Consequences of Failure to Pay

There are numerous negative consequences resulting from a person’s failure or inability to pay debt related to an offense. Some include:

#### *Suspension of Driver’s Licenses*

Texas is among the handful of states that suspends driver’s licenses as punishment for missed payments.

#### *Extending Probation Terms*

Texas is among many states that can extend probation for failure to pay a criminal justice debt.

#### *Jail Time*

Unpaid fines can result the issuance of arrest warrants and resulting jail time.

### Judicial Discretion

In Texas, sentencing judges do have some discretion to set payment priorities for offenders placed on community supervision<sup>146</sup>

**Table: Court’s Authority to Waive Debt<sup>147</sup>**

Obligation Type	Individual Placed on Probation	
	<i>Can Judge</i>	<i>Relevant Authority</i>

	<i>Waive Debt?</i>	
Offense Fine	Yes	Fines are a form of “punishment which is the right of the judge to set. See AG Opinion GA-0220 (2004)
Restitution	Yes	Art. 42.037 Tex. Code Crim. App. allows a judge to forego restitution. Restitution is not “punishment”, making the justification of the judicial discretion different from that of other fines. See AG Opinion GA-0220 (2004)
Court Costs/Fees	Yes	Payments of assessed obligations falls under a judge’s right to ‘set terms of supervision’ pursuant to 42.12 (taking precedence over other statutes) See AG Opinion DM-407 (1996)
Supervision Fees	Yes	“The judge may waive or reduce the fee or suspend a monthly payment of the fee if the judge determines that payment of the fee would cause the defendant financial hardship” Tex. Code Crim. P. Art.42.12(19)(a)
Attorney Fees	Yes	Tex. Code Crim. P. Art. 26.05 requires that a judge make an affirmative finding of ‘ability to pay’ in order to require repayment of attorney fees.

### Offense- Related Debt and Child Support

Federal law prioritizes child support obligations over all other debts owed to the state, including criminal justice debt, which conflict with child support commitments. Incarcerated people under obligation to pay child support may discover that the support has continued to accrue, with interest, during their period of confinement. An individual reentering society following incarceration is expected to pay current child support, current medical support, and the child support arrearages that accrued during confinement. While not “offense related” many individuals experiencing re-entry find it difficult if not impossible to fulfill competing court orders.

Sentencing courts lack the authority to alter a child support child support orders, and may be unaware that the offender has a continuing child support obligation. Some jurisdictions are beginning to address the disconnection between the fines, fees, and costs imposed by the sentencing court and the child support obligation ordered by the family court. Upon motion and order, the child support court can reduce child support payments based on the obligor’s lack of financial resources, including poverty brought on by offense-related debt. By law, child support is cannot exceed 50% of the obligor’s disposable earnings.<sup>148</sup> Court fines, fees, costs and surcharges should first be deducted from the obligor’s net income to arrive at a more realistic starting number for disposable earnings from which to deduct child support and medical support.



Some jurisdictions are trying to develop solutions to this problems. For example , judges in the District of Columbia criminal courts are required to inform individuals with a child support order who are sentenced to prison for more than 30 days that they may petition for modification or suspension of payments during incarceration. D. C. Official Code, title 23, Ch. 1.

### **Court Order Waiving Surcharges**

The driver surcharges under Chapter 708 of the Texas Transportation Code are imposed automatically upon conviction for alcohol-related offenses, and failure to pay them results an automatic suspension of the person's driver's license. The surcharge program now includes a plan for reduce surcharge payments upon a showing of indigency. But the more effective tact with surcharges may be to prove the defendant's indigency to the sentencing court and request that all surcharges be waived at the outset. A motion to waive surcharges can be made orally or through written motion, but the Order must be in writing to prove to DPS that the court has waived the surcharges completely. For a sample Motion to Waive Surcharge and Order, please refer to:

#### **Appendix K: Motion and Order to Waive Surcharge**

### **Outstanding Tickets and Citations**

Unpaid traffic citations can prevent previously incarcerated people from renewing their driver's license. Tickets may have been issued *in* several different jurisdictions and run into hundreds of dollars in fines. If the fees are not paid before the appearance date, additional charges are added, including the cost of collection. Many local governments outsource the ticket collection process to collection agencies. The stale tickets may go to warrant for failure to appear,

DPS maintains a site with information on violators who have been reported by Texas cities and counties in accordance with Chapter 706 of the Texas Transportation Code. Those that appear on the database cannot renew their Texas driver license until the violation is resolved with the reporting court. Entering a Texas Driver's license number and date of birth, will result in a listing of the reporting court, docket number and contact information for each court. Those who cannot pay the fines can then write to the court and explain why they are unable to pay and ask that they be reduced or waived. Whether to do so is completely within the court's discretion. Once the fees are paid and the violation resolved, the court has five business days to forward the clearance once to DPS. The Failure to Appear Program does not

have information on warrants, however, and advises the driver to check with the court to confirm whether a warrant has been issued.

### Excessive Fines and the 8<sup>th</sup> Amendment

The 8<sup>th</sup> Amendment to the United States Constitution prevents the imposition of excessive fines and imprisoning those who cannot pay them (thereby abolishing "debtor's prisons"). Yet there the increasing trend to use fines as a revenue stream for municipalities have led to some aggressive collection tactics and jail time for those unable to pay them, possibly without being informed of their right to counsel.<sup>149</sup> Jailing the misdemeanant who cannot pay a traffic fine arguably violates the 8<sup>th</sup> Amendment's Excessive Fines clause:

"The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *United States v. Bajakajian*, [524 U.S. 321](#), [334](#) (1998).

In *Bajakajian*, the government violated the Excessive Fines Cause because the amount forfeited was "grossly disproportionate to the gravity of defendant's offense." The court also considered the particular facts of the case, the character of the defendant, and the harm caused by the offense. Surely it could be argued that hundreds of dollars in fines owed by a person without the ability or means to pay is disproportionate to the harm caused by minor traffic violations.

## 8. Public Benefits

Public benefits are the common term for a variety of state and federal programs designed to help those in need of assistance. Food stamps (SNAP), Temporary Assistance for Needy Families (TANF) often called cash assistance; Social Security Supplemental Income (SSI) and Medicaid are all examples of public benefits. A criminal conviction or prison sentence can restrict eligibility for various federal benefits, depending on the type and grade of offense and the specific benefit.

### Denial of Federal Benefits (DFB)

The Denial of Federal Benefits (DFB) Program<sup>150</sup> gives state and federal courts- as part of the sentencing process- the ability to deny all or selected federal benefits to individuals who are convicted of drug trafficking or drug possession. Examples of benefits denied include:

- Owners of small businesses losing Small Business Administration loans, or the right to make contracts with the federal government.
- Researchers who lose eligibility to apply for grants.
- Broadcasters and airline pilots losing their Federal Communications Commission or Federal Aviation Administration licenses.
- Doctors who cannot authority to prescribe medicine.

The DFB sanction can be part or combined with of other criminal sanctions. Courts have the option to deny all or some benefits, and to determine the duration of the period of denial, depending on the crime. If benefits are denied as part of a sentence, the sentencing court must notify a government agency that in turn notifies the U.S. General Services Administration (GSA). The GSA publishes a list of the names of individuals who are denied benefits (referred to as the "Debarment List.")

### Temporary Assistance for Needy Families (TANF)

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) ended the individual entitlement to welfare and replaced it with a block grant to States (Temporary Assistance for Needy Families, or TANF), set a five-year lifetime limit on benefits,

required adults to work to receive benefits and strengthened child support enforcement requirements for non-custodial parents.

Temporary Assistance for Needy Families (TANF) provides financial help for children and their parents or relatives who are living with them. Monthly cash payments help pay for food, clothing, housing, utilities, furniture, transportation, telephone, laundry, household equipment, medical supplies not paid for by Medicaid and other basic needs. The amount of the TANF payments depend family size and income.<sup>151</sup>

#### *TANF for Families*

To be eligible, a family must be below income and resource limits as determined by Texas HHSC, including cash on hand, money in the bank and number and type of vehicles. Some features of TANF:

- Families approved for TANF will receive payments for six months.
- Families who receive TANF benefits can also get Medicaid benefits.
- TANF is paid through the [Lone Star Card](#), an electronic debit card.
- TANF payments range from 12 to 36 months for adults, depending on the situation. There are no time limits for children under age 18. If the child is a full time student expected to graduate before age 19, benefits can be paid through the child's graduation.
- A child's parent or relative cannot be approved for TANF unless he or she signs a Personal Responsibility Agreement.

#### *Personal Responsibility Agreement*

The agreement requires adult TANF recipients to:

- Train for a job or look for employment if capable.<sup>152</sup>
- Cooperate with the Office of Attorney General - Child Support Division and take parenting skills classes if required.
- Not voluntarily quit a job, or abuse alcohol or drugs.
- Make sure the children are attending school and are up-to-date on medical screenings and required immunizations (usually through Medicaid).

#### *"One-Time TANF"*

People leaving prison may qualify for short-term, nonrecurring TANF benefits to meet immediate personal and family needs following release. Families who already get TANF cannot get a one-time TANF payment. Unlike regular TANF, this benefit is not considered "assistance."

One-time TANF is designed to help with short-term crisis such as:

- Loss of a job, loss of a home, or other sudden financial loss, such as loss of financial support for a child or help paying living expenses like rent, utilities and food.
- Unemployment following graduation from an institution of higher learning (university, college, junior college, technical training school).
- Loss of employment income because vehicle is not working.
- A Medical emergency.

#### *One-Time TANF Grandparent Payment*

The One-Time TANF Grandparent Payment is \$1,000 cash assistance given to a grandparent who cares for a child receiving TANF. A grandparent can only receive this payment once, even though other grandchildren may move in at a later time.

#### *Felony Drug Offenses - Lifetime Ban*

Felony *drug offenders* convicted after August 22, 1996 face a lifetime ban on TANF benefits. The ban is only for felony drug offenses; a person convicted of a misdemeanor drug offense is not restricted from the TANF programs. Formerly incarcerated people on probation or parole must attend welfare-to-work programs, have no outstanding warrants and not be in violation of probation or parole requirements to maintain eligibility.

### **Food Stamps (SNAP)**

SNAP food benefits “food stamps” are available for eligible single persons or families. The benefits periods last for 6 months, but can as short as 1 month or as long as 3 years. Adults between the ages of 18 and 50 who do not have children at home can only receive SNAP for up to 3 months in a 3-year period. The period can be longer than three months for a single person if he or she works at least 20 hours a week or is in job training. Like TANF, SNAP benefits are through the Lone Star Card.

As with TANF, in order to obtain benefits, formerly incarcerated people on probation or parole are required to attend welfare-to-work programs, have no outstanding warrants and be compliant with the terms and conditions of probation or parole to maintain eligibility for SNAP.

#### *Emergency SNAP*

Emergency SNAP benefits are for those in an emergency situation who need immediate food assistance, including families with less than \$35 combined income and resources, whose existing resources cannot cover rent and utilities, or migrant or seasonal workers with very low income and resources.

### *Felony Drug Offenses - Lifetime Ban*

Like the ban on TANF, persons convicted of a felony drug offense after August 22, 1996 are forever banned from receiving SNAP benefits. The ban applies only to felonies, and only to drug offenses.

### **Medicaid and Chip**

Low income families can apply to the state's [Medicaid Program](#) for health care. Families who qualify for Medicaid also qualify for TANF. Families who fall outside of Medicaid resource and income guidelines might qualify for CHIP, or the [Children's Health Insurance Program](#). This program covers medical and dental care as well as eye examinations.

A family can receive Medicaid benefits as long as income and resource requirements are met. Before the end of each six month period of coverage, a renewal application is sent to the family.

### **Social Security and SSI**

#### *Social Security*

Generally, the term social security describes a program that provides old age, disability, and survivors insurance, as well as supplemental security income, an income for elderly or disabled people. The money raised from social security taxes goes to providing benefits for those who have reached retirement age or are otherwise currently eligible. Social Security benefits are based on the amount of Social Security taxes paid based on individual income.

The SSA expects offenders to inform them (and if a Veteran, the Department of Veterans Affairs) when convicted of a felony involving incarceration. Benefits will be suspended for the offender during the period of incarceration. Family members who are eligible for benefits based on the offender's work history can continue to receive benefits.

#### *Social Security Supplemental Income (SSI)*

Supplemental Security Income is funded by general tax revenues (not Social Security taxes). SSI benefits can be paid to people who are 65 or older, or blind or disabled people who have little or no income. No SSI benefits are payable for any month that an offender is in jail or prison, and payments are halted during the period of incarceration. A jail or prison sentence of twelve months or more terminates eligibility for SSI benefits. If incarcerated for one month, benefits will be suspended but not terminated; there is no need to reapply. The correctional facility is supposed to notify the Social Security Administration when the offender is released, so that eligibility for SSI can be restored. People recently released from incarceration should

follow up with the Social Security Administration to make sure that the agency has been notified of the release.

### *Outstanding Warrants*

Criminal warrants can affect eligibility for SSI. People with outstanding felony warrants are ineligible. Violations of the conditions of probation or parole that are imposed as part of a federal or state sentence will also trigger ineligibility.<sup>153</sup> A warrant, even for an unpaid fine, must be resolved in order to restore eligibility for benefits.

### *"Overpayments"*

Whether in prison or under warrant, SSI may consider any benefits paid during the period of ineligibility to be an "overpayment." If this is the case, the SSI recipient will receive an overpayment notice, which can be appealed. For help with the appealing the denial of benefits, contact an attorney or local legal aid office.

## **Unemployment Benefits**

Texas offers temporary financial help to people who are unemployed or partially unemployed through no fault their own. Job loss because of a criminal conviction would not likely qualify that person for unemployment benefits, because the loss is attributable to fault of the applicant.<sup>154</sup> In a right-to-work state, the employee is at a disadvantage if criminal history is a reason for termination. Regardless of a criminal conviction, a person finds a job and subsequently loses it through no fault of their own might qualify for unemployment.<sup>155</sup>

## **Education Assistance**

Effective July 1, 2000, Congress placed restrictions on student financial aid for students who have been convicted of certain drug-related offenses. A conviction prior to July 1, 2000 might affect financial aid eligibility. Students who are ineligible can regain eligibility early by either having the conviction invalidated or by successfully completing an approved drug rehabilitation program, which includes two unannounced drug tests. The Department of Education uses the FAFSA (Free Application for Federal Student Aid) to enforce these restrictions.

A non-drug related conviction does not automatically render a person ineligible for federal financial aid. People barred from federal financial aid because of a drug conviction may still be eligible for non-federal aid from states and private institutions. Every student should therefore complete the [FAFSA](#).

## **Resources**

Texas 2-1-1 - Office of Eligibility Services: For questions, information or assistance with Food Stamps, (SNAP), Medicaid (adult or children), Children's Health insurance Program (CHIP) or Temporary Assistance for Needy Families (TANF), dial 2-1-1 or visit [YourTexasBenefits.com](http://YourTexasBenefits.com).

Texas Legal Aid Offices:

Lone Star Legal Aid: [www.lonestarlegal.org](http://www.lonestarlegal.org)

Texas RioGrande Legal Aid: [www.trla.org](http://www.trla.org)

Legal Aid of Northwest Texas: [www.lanwt.org](http://www.lanwt.org)

Texas Law Help: Free Legal Information on Public Benefits and other topics:  
[www.texaslawhelp.org](http://www.texaslawhelp.org)

Social Security: [www.socialsecurity.gov](http://www.socialsecurity.gov)



## 9. Shelter and Housing

For people newly released from prison, stable housing is pivotal to successful reentry. This section addresses housing options, the effect a person's criminal history plays in obtaining housing, and legal rights as they pertain to housing.

### Homelessness

Ideally, offenders close to release will have been counseled on housing options and made a reentry plan that addresses shelter and housing issues.<sup>156</sup> Far too many people facing reentry have no place to call home and no family members willing to take them in. For these individuals, immediate housing options may be limited to homeless shelters or charities.<sup>157</sup>

This problem is especially acute for people under a "serve-all," or day-for-day sentence. Once released, they are no longer under the jurisdiction of the corrections system or the Board of Pardons and Paroles. Those directly released from incarceration leave with nothing more than with their personal belongings, \$100, and a bus ticket. With nowhere to go, a homeless shelter might be the only alternative to sleeping on the streets.

#### *Shelter Resources*

The availability of shelter resources for the homeless vary by location. To search shelters by Texas County, see the [Homeless Shelter Directory](#) website.

### Release to Supervision

Individuals released on parole are still under the jurisdiction of the TDCJ. By law, they must be paroled to the county where they resided at the time the offense was committed, or to the county of conviction, sometimes called the Legal County of Residence (LCOR).<sup>158</sup> Exceptions to release to the LCOR depend on circumstances such as the availability of employment and location of family members.<sup>159</sup> Other restrictions apply to the release of persons convicted of certain sex crimes.

#### *Halfway Houses*

The terms and conditions of a person's release from prison may require living in a halfway house.<sup>160</sup> Halfway houses are intended to provide transitional housing for the formerly incarcerated people in the process of reintegration, while still providing monitoring and support

Regardless of the offense, bed space available in TDCJ-approved halfway houses severely limited, so that people who otherwise qualify for early release sometimes remain in prison until space is available.<sup>161</sup>

### *THAP Program*

The Temporary Housing Assistance Program (THAP) was created to provide temporary housing for those who have approved for parole and are approaching their mandatory release date.<sup>162</sup> THAP site providers receive payments directly from TDCJ. THAP payments cannot exceed the cost that TDCJ would pay to incarcerate the person for the same time period for which the payment is issued.

There is no application for THAP. Candidates are screened for THAP before release for eligibility. If accepted, the THAP recipient must to actively seek employment, adhere to the housing provider's rules and be able to secure a more stable work and housing situation when the three month term has expired. THAP housing continues to be limited due to the availability of THAP providers.

#### Not Eligible for THAP

- People released under a "serve-all" sentence
- People who have housing provided by family or friends
- People whose county of return has a TDCJ-funded halfway house (Dallas, El Paso, Jefferson, Harris, Tarrant, and Travis Counties).

### *Living with Family Members*

Those who are not awaiting placement to a halfway house may have other housing options, like moving in with a family or friend during the transition period. Family members can often provide shelter and social support for a successful reentry. If the family is living in federally subsidized housing, all household members should be aware that:

- The reentering person will not be counted as a household member for purposes of getting a larger housing subsidy or living accommodation.
- If the re-entering person disrupts or violates the public housing rules, the entire household could be evicted, regardless of whether the behavior is a criminal offense.

## Affordable Housing

### *No Automatic Disqualification*

There is no federal “ban” or automatic disqualification on either type of housing for people with criminal convictions, but each program is locally managed and has wide discretion to develop local policies governing admission and occupancy.

### *Waiting Period*

People who may not have access to affordable housing may qualify for subsidized housing, but the wait for affordable housing can take months, even years. Each housing authority maintains its own waiting list(s).

### *Types of Supportive Housing*

There are two types of federally supported housing: Public Housing and the Housing Choice Voucher Program. With public housing, local government agencies both provide and regulate housing units. With the housing choice voucher program (or “Section 8”), the government provides a subsidy (voucher) to private landlords in exchange for renting to a qualifying tenant at a reduced rate.

The federal government, through the U.S. Department of Housing and Urban Development (HUD) provides support to local Public Housing Authorities (PHA's). PHA's are responsible for providing and regulating affordable housing within their communities.<sup>163</sup>

### *Eligibility for Public Housing*

Public housing is limited to low-income families and individuals. A PHA determines eligibility based on:

- annual gross income;
- whether the applicant qualifies as elderly, a person with a disability, or as a family;
- U.S. citizenship or eligible immigration status;
- preferences that may give some families preference over others on the waiting list depending on the needs in its own community, and
- other tenant selection factors that the local PHA may establish as long as they do not violate federal antidiscrimination laws.

PHA's have the authority to:

- access criminal records of the applicant or current tenant, and

- access records from drug treatment facilities where that information is *solely* related to whether the applicant is currently engaging in the illegal use of a controlled substance.<sup>164</sup>

### *Application for Public Housing*

A person seeking public housing must apply through their [local PHA](#). As part of the application, the PHA will need the following information:

1. Names, sex, date of birth and relationship to the applicant of all who are expected to live in the unit;
2. The applicant's present address and telephone number;
3. Other family circumstances that might qualify the family for a tenant selection preference, such as veteran status, current housing situation;
4. Contact information on current and previous landlords so that they can be contacted about the family's suitability as a tenant;
5. The family's estimated anticipated income for the next twelve months and its sources;
6. Contact information for the applicant's employers, banks and any other information needed to verify income and the family composition; and
7. The applicant's acknowledgement that the PHA has the right to visit the home to interview the applicant and family members to check on upkeep of the home.

### *Criminal Background Check*

Federal law requires criminal background checks to be run on adult household members applying to live in public housing. Because criminal records can contain errors, PHA's must give applicants an opportunity to dispute the accuracy of their criminal records.<sup>165</sup>

### *Documents Required*

The applicant may need to provide certain documents to verify the information in the application, such as a birth certificate or tax returns. The PHA can also ask the applicant to sign a release enabling the PHA to get information from third parties, like an employer, to verify employment status.

### *Selection Preferences*

Each local PHA can set its own preferences as long as they are nondiscriminatory. A PHA may have a preference for a family over a single person, or for a disabled person over a

single family. Applicants should ask the PHA what preferences they may apply. The PHA can close the waiting list if there are more families on the list than they can place in the near future.

*Decision on Application*

The PHA must send written notice of its decision. If accepted, the PHA will usually add the applicant’s name to a waiting list and contact the applicant when housing is available. Once housing is available, the applicant will sign a lease with the PHA. The PHA is the landlord. If the application is denied, the PHA is required to state why and provide information on how to appeal the decision.

*PHA as Landlord*

Rent is referred to as the Total Tenant Payment (TTP). It is based on the family's anticipated gross annual income less deductions. As the landlord, they are responsible for ensuring that the tenant follows the lease, maintenance and repairs, move tenants to another unit if required and terminate the lease if the tenants are in violation.

If the tenants comply with the lease and remain income-eligible, they can usually stay in public housing indefinitely. The PHA is permitted to re-examine the family income at least once every 12 months to make sure the family remains eligible for public housing.

**Evictions, Restrictions and Bans**

Federal laws govern both admission and eviction standards for federally subsidized housing. These laws give the PHA's broad discretion to craft eviction policies for their individual communities. Access to public housing can be restricted or banned based on some of the following:

**Table: Bans and Restrictions on Federally Subsidized Housing**

Type of Restriction	Reason	Duration	Authority
Mandatory Permanent	Ban on current people who are current illegal users or pattern that demonstrates ongoing use and threat to others	Permanent	42 USCA § 1437n. 1.
	Lifetime ban for conviction for Methamphetamine manufacture in federally assisted housing		
	Lifetime ban on sex offenders subject to lifetime registration		
	Any tenant evicted from federally		

	assisted housing by reason of drug-related criminal activity in the last three years.		
Mandatory Temporary	Any household member currently engaging in illegal use of a controlled substance. Regulations define "currently engaged in" as "if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current." PHA's are advised to define "recently" as a specific period of time, such as the past month or six months.	3 years from date of eviction unless: shortened with evidence successful rehab or circumstances of eviction no longer exist	42 USCA § 13661 24 CFR § 982.553; 24 CFR § 960.204.
	Drug related criminal activity		
	Violent criminal activity		
Discretionary	Criminal activity poses threat to owner, residents or PHA staff on or off premises. Eviction must comply with due process	Can be accepted if criminal activity occurred a "reasonable" # The definition of "reasonable" is left to local PHA. # time before the person seeks admission.	42 USCA §13661 (c). 42 USC §1437d. See 42 USC §1437d(k); 24 CFR §966.51.

*Evidence Required For Denial*

PHA and Section 8 housing can be denied or terminated for criminal activity based on a preponderance of evidence.<sup>166</sup> Preponderance of evidence is defined as evidence which as a whole shows that a fact is more probable than not. The intent is to prove that the act(s) occurred, not that a crime took place. Evidence from police and court records, testimony from neighbors, documentation of drug raids or arrest warrants can all be credible evidence. HUD states that examples of evidence of illegal activities "may include a conviction record, former landlord references, etc."<sup>167</sup> This applies to both public housing and Section 8 housing.<sup>168</sup>

*Opportunity to Dispute*

If the housing authority chooses to terminate the lease, it must notify the tenant, provide copies of the criminal record information and an opportunity to dispute the information. The opportunity to dispute must be offered before the housing authority can take any action against the tenant based on the information.<sup>169</sup>

*Grievance Procedure*

HUD requires housing authorities to have an administrative grievance procedure under which tenants will:

- be advised of the specific grounds of any proposed adverse public housing agency action;
- have an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection (l) of this section;
- have an opportunity to examine any documents or records or regulations related to the proposed action;
- be entitled to be represented by another person of their choice at any hearing;
- be entitled to ask questions of witnesses and have others make statements on their behalf; and
- be entitled to receive a written decision by the public housing agency on the proposed action. 42 USCA § 1437d(k).

#### *Right to Review*

A person who is denied housing assistance must be provided an opportunity to review the adverse decision.<sup>170</sup> The review process must be included with the notice of denial or termination.<sup>171</sup>

#### *Mitigating Circumstances*

The PHA "is required" to consider mitigating circumstances for applicants such as evidence of rehabilitation or willingness to participate in counseling or social services.<sup>172</sup>

The PHA "may" consider mitigating circumstances for Section 8 Applicants.<sup>173</sup>

Applicants can bring positive letters or other documents to show evidence of rehabilitation. Some examples include:

- School: transcript or letter from teacher or school administrator detailing length of attendance, grades, punctuality, etc.
- Job Training: letter from a program supervisor or administrator
- Employment: letter for a supervisor detailing length of employment and job performance (include any employment during incarceration)
- Counseling or social service program: letters describing attendance, positive drug tests, etc.
- Certificate of Relief from Disabilities or Certificate of Good Conduct

- Other, such as certificates from programs such as anger management, drug/alcohol treatment; letter from Parole Officer with positive information; letters from clergy; letters from landlords or building superintendents; letters from neighbors; proof of your children's successes; letters from family.

### *Domestic Violence*

Public housing and Section 8 tenants must comply with the Violence Against Women Act, and cannot exclude or deny housing to victims of family or dating violence.<sup>174</sup>

### **Housing Discrimination**

If the real reason housing is denied is illegal discrimination, not offender status, an applicant can pursue certain legal remedies to challenge the denial. Under federal law, a housing provider may not discriminate based on a person's race, sex, national origin, religion, family status or disability.<sup>175</sup> This is true for all housing, regardless of whether it is private, federally subsidized, or publicly owned.

Discriminatory practices can range from flagrant abuses to more subtle forms. Part of the challenge in combating illegal discrimination is in identifying when it occurs and recognizing housing practices that have a discriminatory effect.<sup>176</sup>

### *Refusing to Rent or Sell*

An obvious violation of civil rights laws occurs when an apartment manager, leasing agent, landlord or owner simply refuses to rent or sell to a member of a protected class.<sup>177</sup> For example, a landlord's refusal to rent an apartment to a single black woman who otherwise qualifies might constitute discrimination based on race, sex, or family status. A leasing agent who refuses to show a property to an applicant from Pakistan may be discriminating on the basis of national origin, religion, or both. Disability-based discrimination may be obvious where a landlord refuses to rent to a blind or deaf person.<sup>178</sup> It is less obvious where the disability is addiction or alcoholism. Denying housing to an alcoholic or former addict who is not currently abusing alcohol or engaged in the current use of illegal drugs is illegal discrimination based on disability. Sexual discrimination can also take more subtle forms. For example, a manager of an apartment complex who demands sexual favors from a woman in return for renting to her is sexual harassment, which is a form of sexual discrimination.<sup>179</sup>

### *Applying Different Terms and Conditions*<sup>180</sup>

Discrimination may be present when an owner or landlord applies different terms and conditions surrounding the lease or sale of housing to some people but not to others. Uneven



treatment can be illegal discrimination when, for example, a landlord demands a higher security deposit from a family with children (discrimination based on family status) or where a leasing agent charges an exorbitant rental application fee to a minority (racial discrimination).<sup>181</sup>

### *False Information about Availability*<sup>182</sup>

Other owners, managers or leasing agents might lie about the availability of housing to some applicants but not to others; as for, example, an apartment complex with “now leasing” signage claims tells an applicant in a wheelchair user that all units are full. Providing false information about the availability of a property can be evidence of discrimination.

### *Reporting Discrimination*

People who believe that they have been denied housing because of discrimination based on their race, color, national origin, religion, sex, family status or disability can file a fair housing complaint. The Texas Workforce Commission Civil Rights Division will accept a housing complaint

- In person: by coming to the Division office located at 1117 Trinity St., Room 144-T in Austin, Texas, or
- By telephone: toll free number: 1-888-452-4778, between 8:00 AM and 5:00 PM.
- By letter: addressed to:  
Texas Workforce Commission  
Civil Rights Division  
1117 Trinity Street, Rm. 144-T  
Austin, Texas 78701

After the complaint is received, the applicant will be assigned an investigator who discuss the process for filing the complaint, how it will be investigated, and help with preparing the complaint. A complaint may also be filed through the U.S. Department of Housing and Urban Development (HUD), by calling 1-888-560-8913, or in writing to:

U.S. Department of Housing and Urban Development,  
Southwest Office of Fair Housing and Equal Opportunity,  
801 Cherry Street, P.O. Box 2905, Fort Worth, Texas 76113-2905

## **Renting with a Record**

Most larger apartment complexes order both credit and criminal history records on prospective tenants from private vendors of this information. Many private noncommercial rentals, however, do not require a criminal background or even a credit screening as a prerequisite to renting. Accordingly, avoiding properties offered through a commercial leasing

agency in favor those managed by a local, private owner might provide an ex-offender with a better opportunity to explain his criminal history directly to the person that he will be renting from, rather than a leasing agent employed by a commercial property management company. The local owner or landlord can also be more flexible and perhaps willing to negotiate the lease terms.

Establishing credit is important in order to build a credit history that will enable the renter to upgrade based on a positive payment history. Settling for a rental property that is not ideal may be worth signing the lease in the short term in order to build a credit history that may lead to an upgrade to better housing.

#### *Roommate or Sublet*

Seeking a roommate situation or a sublet might resolve an immediate need for a place to stay. Renting a room as a sublet has the advantage of not requiring a criminal background check that would normally be part of a lease.

#### *Group Homes or Boarding Houses*

This type of housing is generally unregulated, but may violate zoning restrictions if there are too many unrelated people reside in the same house. Other occupants may have criminal convictions that may or may not be known to the other household members. A renter on probation or parole could therefore unwittingly violate the terms and conditions of release that prohibit association with other ex-offenders.

#### *Renting from Private Owner*

In housing that is not federally subsidized, factors such as credit history and criminal history can be used by a private owner to refuse to rent to a prospective tenant. Private or corporate owners and landlords have the legal right to deny housing to any person for any reason, unless the landlord is engaged in illegal housing discrimination.

#### *Selection Criteria and Acknowledgment*

Along with the rental application, the landlord must provide written notice of the criteria used to accept or deny the application, such as the applicant's:

- Criminal history;
- Previous rental history;
- Current income;
- Credit history; or
- Failure to provide accurate or complete information on the application form.

Selection criteria are not limited to the items listed above. The written notice can appear in the body of rental application or in a separate document. If it is in the rental application, it must be underlined or appear in bold-faced type. It must also state that the application fee will not be refunded if the application is rejected. A typical notice may state:

“Signing this acknowledgment indicates that you have had the opportunity to review the landlord’s tenant selection criteria. The tenant selection criteria may include factors such as criminal history, credit history, current income, and rental history. If you do not meet the selection criteria, or if you provide inaccurate or incomplete information, your application may be rejected and your application fee will not be refunded.”

The applicant’s written acknowledgment indicates only that she had an *opportunity* to review the landlord’s selection criteria. The landlord’s selection criteria are not limited to the criteria listed on the notice, and applicant is entitled to review the selection criteria used by that particular landlord. The law prevents both the landlord and prospective tenant from waiving the notice. Any attempt to waive the application notice will render the application void.

### **Consumer Reporting Agencies**

Most landlords hire consumer reporting agencies (CRAs), such as ChoicePoint or First Advantage Safe Rent to provide background checks background checks on a consumer’s criminal history and credit history. When landlords use CRAs the Fair Credit Reporting Act (FCRA) applies.<sup>183</sup> The FCRA does not protect prospective tenants from being denied admission on the basis of a criminal record, but can add transparency to the process.

#### *Criminal History Records*

CRA’s cannot report “other adverse items of information, other than records of convictions of crimes which antedates the report by more than *seven years*. [emphasis supplied]. Fair Credit Reporting Act (FCRA), 15 USCS 1681c(a)(5).

In sum, under the FCRA, CRA’s

- Can report offenses resulting in criminal convictions indefinitely.
- Cannot report arrests not resulting in conviction if they are more than 7 years old.<sup>184</sup>
- Although not specifically addressed under the FCRA, offenses resulting deferred adjudication that are discharged and dismissed and are more than 7 years old should not be reported either, because they are not convictions.

### *Correcting Inaccurate or Stale Information*

CRAs must maintain “reasonable procedures to assure maximum possible accuracy of the information” in the report.<sup>185</sup> To claim a violation, a prospective tenant must show that:

1. The report included inaccurate information;
2. The report included the inaccurate information because the CRA did not maintain reasonable procedures;
3. The suffered injury; and
4. The inaccurate information caused the injury.<sup>186</sup>

#### Disclosure and Investigation

Upon request, CRAs must give a prospective tenant a copy of his or her file, disclose the sources of the information in the file, and identify each landlord that procured a report within the past year. If a person notifies a CRA that the report is inaccurate or incomplete, the CRA must, free of charge, conduct a reasonable reinvestigation to determine if the information is inaccurate or incomplete and update the file within 30 days.<sup>187</sup>

#### Damages and Enforcement

The Federal Trade Commission enforces most of the provisions of the FCRA.<sup>188</sup> The FTC is entitled to file suit to recover civil penalties from a CRA or a landlord for a knowing violation that constitutes a pattern or practice<sup>189</sup>

### **Application Fee**

A landlord may require two initial payments to secure rental housing: an application fee and an application deposit. The application fee is paid by the prospective renter at the time the application is made. Not all landlords require an application fee. The purpose of the application fee is to reimburse the landlord for the cost of obtaining a background check, which normally includes the applicant’s credit history, rental history, current income, criminal history, and similar information. Although there is no legal limit on the amount that can be charged for an application fee, most run under \$50.00. Application fees are nonrefundable except in cases where the landlord rejected the applicant without stating the reason. If the application is accepted, a security deposit may also be required.

#### *Deposit*

In addition to the application fee, the landlord may also require a deposit to hold the property while the application is being processed. This application deposit is the prospective tenant’s assurance to the landlord that he will move into the unit if approved.

### Forfeiture of Deposit

There is no grace period to back out of a signed rental application. If the application is approved, the application deposit may be applied to the security deposit when the lease is signed. If the application is approved but the applicant changes her mind – even later the same day –she risks forfeiting the application deposit. Some rental applications require that the lease be signed within three days of approval or the deposit will not be returned. The [Texas Tenant Advisor](#) suggests in case of a change of mind after the deposit is made to wait until at least seven days have passed before seeking return of the deposit. If the application is rejected, or the applicant doesn't hear back within seven days (no decision is considered a rejection) the landlord is expected to refund the application deposit.

### *Rejection Deadline*

Some landlords don't use an application at all, and may or may not ask the prospective tenant to make a deposit. If a deposit is made to hold the property, the landlord has seven days from the date of the deposit to decide whether to rent. If within seven days no action is taken, the application is considered rejected and the deposit must be refunded. However, there is no legal deadline by which the landlord must refund it. If the landlord does not refund it, a lawsuit may be the only way to get the application deposit returned. For this reason, a prospective tenant should never pay an application deposit or sign the application unless absolutely sure that he will move into the unit if approved. If the renter can show that the landlord acted in bad faith by failing to refund the application deposit, the landlord can be liable for \$100, three times the amount of the deposit, and attorney's fees.

### **Resources**

#### Texas

Call 2-1-1 for contact information on local shelters and food pantries, and other social services. 2-1-1 is answered every day, 24 hours a day, 7 days a week.

[Texas State Bar](#) Helpful Legal Information - Tenants' Rights

[Texas Workforce Commission Civil Rights Division](#)

[Texas Low Income Housing Information Service](#) Affordable housing and tenant/landlord information

[Texas Department of Housing and Community Affairs](#) State Housing Agency

HUD Affordable apartment search - Texas

[www.hud.gov/apps/section8/step2.cfm?state=TX%2CTexas](http://www.hud.gov/apps/section8/step2.cfm?state=TX%2CTexas)

### *Tenant Organizations*

#### [Texas Tenant Advisor](#)

Texas Tenants Union (Dallas based)

Housing Crisis Center (Dallas based)

Austin Tenants' Council [Austin Tenants' Council](#)

[Tenants' Council of Houston](#)

#### *Legal Aid:*

Legal Aid of Northwest Texas

Legal Assistance: (800) 955-3959

[www.lanwt.org](http://www.lanwt.org)

Lone Star Legal Aid

Legal Assistance: (800) 354-1889

[www.lonestarlegal.org](http://www.lonestarlegal.org)

Texas RioGrande Legal Aid, Inc.

Legal Assistance: (888) 988-9996

[www.trla.org](http://www.trla.org)

### National

[National Alliance of HUD Tenants](#)

[National Housing Law Project](#)

[National Housing Trust](#)

[National Low Income Housing Coalition](#)

[Housing Preservation Project](#)

[U.S. Department of Housing and Urban Development](#)

[HUD Fair Housing Office](#) Fair housing information and complaint form

[Hudclips](#) HUD notices, handbooks, and regulations relating to federally subsidized housing

[Huduser](#) Housing data

## 10. Rights of Parents

This section describes some of the most common legal barriers faced by parents who have been apart from their children due to incarceration, including rights of parents, locating children, and court proceedings that affect the rights of parents and children.

### Equal Rights to Child

Parents are the natural custodians of their children, and their rights are superior to all others. Both parents have equal rights to their child. Absent a court order limiting or defining custody, access and possession, either parent can take the child from the other parent, collect the child from school, attend all school activities, authorize medical and psychiatric care for the child and all of the other rights and duties to which parents are legally entitled. This is true regardless of time a parent may have spent away from the child, such as period of absence due to incarceration. Incarceration alone does not alter the natural rights of the parent. The only way the relationship can be altered, or custody determined, is by a court that has issued an order signed by a judge.

### Locating Children

Regardless of whether there is a court order for custody and visitation, the law does not require a parent or caregiver to take children to visit an incarcerated parent. Without regular contact during a period of incarceration, it is easy for some parents lose track of their children's whereabouts.

Most Texas court orders involving children require both parents to keep each other and the court informed about their current residence and place of employment. If there is a court order in place for custody child support, the address of both parents must be listed in the Order. Both parties are required to keep the court updated on their addresses as well as those of the children.<sup>190</sup> A copy of the court order can be obtained from the district court clerk in the county where a decree was issued or paternity was established.

Check with the school district they last attended and request copies of the child's school records, which may list the child's current address or the address of the school to which they were transferred. The school may require a copy of the current custody order before the records are released. If there is no court order in place, the formerly incarcerated parent is as

entitled to contact the children through their school as the other parent, but may need to show proof of parentage.

A parent who is not currently paying court-ordered child support might consider contacting the Office of Attorney General - Child Support Division (OAG) and volunteer to pay support. If the other parent is receiving public benefits, the OAG is entitled to seek child support in behalf of the children. By volunteering to pay, the OAG may then be able to initiate a proceeding that would match the custodial parent currently receiving benefits to the parent who wishes to pay child support and as a result of the court order, be entitled to access and possession ("visitation") of the children.

### **Custody**

Regardless of whether the parents are married, the court can decide (often as part of a child support proceeding) which parent should be named the child's primary conservator, or custodial parent. In making this decision, a court is required to consider the "best interest of the child" over the wishes of either parent. If the child is 12 or older, upon request the court must interview the child to determine the child's wishes as to which parent the child wants to live with most of the time. For children under 12, the court may interview the child but does not have to. In determining possession and access, the court will consider, among others, the following factors<sup>191</sup>:

- the desires of the child;
- the emotional and physical needs of the child now and in the future
- the emotional and physical danger to the child now and in the future;
- the parental abilities of the individuals seeking custody;
- the programs available to assist these individuals to promote the best interest of the child;
- the plans for the child by these individuals or by the agency seeking custody;
- the stability of the home or proposed placement;
- the acts or omissions of the parent which may indicate that the relationship is not a proper one; and any excuse for the acts or omissions of the parent.

### *Nonparent Caregivers*

Nonparents can also be awarded custody of children. A nonparent caring for a child in behalf of a parent or parents, whether by agreement with the parent(s) or as a result of a CPS



placement, may decide to file suit to get legal custody of the child. Regardless of the circumstances, Texas law allows a custody suit by:

“a person, other than a foster parent, who has had actual care, control, and possession of the child *for at least six months ending not more than 90 days* preceding the date of the filing of the petition.<sup>192</sup>

This provision confers legal standing on anyone who has been caring for a child longer than six months to file for custody. For a previously incarcerated parent who wants to retain custody of her child who is currently in the care of a friend or relative, it is important to assert parental rights and take the child back before the caregiver can legally sue for custody. A criminal history record can affect a parent’s right to retain custody, depending on the nature of the offense(s) and if the court can be persuaded that awarding a nonparent custody would be in the child’s best interest.

#### *Authorization Agreement for Nonparent Relative*

Previously incarcerated parents experiencing reentry may not be in the best position to immediately care for their children. A parent who is temporarily unable to care for her child can execute an Authorization Agreement for Nonparent Relative. This agreement authorizes a third party to care for a child temporarily, but also carries an expiration date which shows the parent’s intent to remain the child’s conservator. Completing the authorization agreement will not bar a custody suit by the nonparent, but can be introduced as evidence in a custody suit to show that the intent of the agreement with the nonparent to care for the child was temporary. For a blank Authorization Agreement, please refer to

#### **Appendix L: Authorization Agreement for Non Parent Relative**

### **Paternity**

Under Texas law, when a father and mother sign an Acknowledgment of Paternity and the court accepts these documents, the father becomes the “legal” father. Paternity means that fatherhood has been legally established and the father may be ordered to pay child support. A registry of paternity is established in the bureau of Vital Statistics. A man who wants to acknowledge paternity voluntarily may register with Paternity Registry

- Before the birth of the child, but
- Not later than the 31<sup>st</sup> day after the date of the birth of the child.

If the relationship between the father and the child has been established under another law, or if a man begins a proceeding to adjudicate his paternity before the court has terminated his parental rights, then he is entitled to notice of the proceeding regardless of whether he registers with the registry of paternity.

## **Termination of Parental Rights**

Termination lawsuits are broadly divided into two categories, voluntary terminations and involuntary terminations.

Voluntary termination cases are cases in which the parent whose rights are to be terminated consents to the termination. It is unlikely that a court will terminate the parental rights of a person obligated to pay child support. The exception is where there is another person willing to adopt the children affected by the termination and therefore assume financial responsibility.

Involuntary termination cases are brought without the consent of the parent whose rights are to be terminated. The majority of these cases are brought by CPS following an investigation of child abuse or neglect. While there are two dozen or so specific statutory grounds for involuntary terminations, most fall under general categories of abandoning parental responsibilities, endangering the child, engaging in serious criminal conduct or cases in which the parent has exposed the children to harm, abuse or neglect

In either type of termination case, the court must reach the conclusion that the termination is in the child's best interest. The parent whose rights are to be terminated must be notified of the termination lawsuit after it has been filed and they can contest the lawsuit if they choose. Assuming a court does order a termination of parental rights, the parent whose rights are terminated will lose all parental rights, becoming a "legal stranger" to the child and will no longer have a duty to pay child support.

## **Child Protective Services (CPS)**

If CPS is or has been involved with the children, the newly released parent should confirm whether the CPS case is still active. In an active CPS case where the children have been removed from a parent or caregiver based on allegations of abuse or neglect, parents have the following rights:

- The right to an attorney, if CPS is seeking to terminate parental rights.
- The right to admit or deny the allegations that prompted the investigation.
- The right to be notified of all court hearings.
- The right to attend all court hearings and meetings.

- The right to an interpreter in court if you do not understand English or are hearing impaired.
- The right to talk to the CPS caseworker and attorney.

#### *Access to CPS Records*

Agency case records of children and adults are only releasable to certain parties and not to the general public. Whether CPS records are released depends upon the requestor's relationship to a case. The requestor may or may not be entitled to the information sought.

CPS records are confidential under Section 261.201(a) of the Texas Family Code. Most records will not be released unless there is a court order to release the records. Those entitled to a copy of CPS records without a court order include:

- The parent or other legally responsible adult of the child who is the subject of the case,
- An adult who was, as a child, the subject of the case, including adoptions,
- A person alleged or designated to be the perpetrator in the case, or
- Other individuals identified in the Texas Administrative Code.<sup>193</sup>

#### **Resources**

Form to request CPS records: [http://www.dfps.state.tx.us/documents/child\\_protection/4885.pdf](http://www.dfps.state.tx.us/documents/child_protection/4885.pdf)

A Handbook for Parents and Guardians in Child Protection Cases:

[http://www.texasbar.com/Template.cfm?Section=Committees\\_List1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=8500](http://www.texasbar.com/Template.cfm?Section=Committees_List1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=8500).

What to Expect in Texas Family Law Court:

<http://www.texasbar.com/Template.cfm?Section=Home&CONTENTID=17003&TEMPLATE=/ContentManagement/ContentDisplay.cfm>

Texas Law Help This website is an online resource for free and low-cost civil legal assistance for those who cannot afford legal help. <http://texaslawhelp.org/TX/index.cfm>

Women's Law.org: This website provides easy-to-understand legal information and resources to women. <http://www.womenslaw.org/index.php>

## 11. Child Support and Modification

Texas law does not permit an exemption, automatic suspension, or reduction in child support payments for incarcerated persons who are under court order to provide support. If the offender was under a child support order going in to prison, the support obligation remains the same and child support debt continues to accrue, with interest on the unpaid balance. Child support obligations are given priority over all other obligations that the inmate may have.

This section provides some basic information about child support: how it is calculated, the factors a court may consider when setting or modifying support, medical child support orders and other matters relating to support of minor children.

### Child Support and Previously Incarcerated Parents

In Texas, a previously incarcerated parent may have accrued a staggering amount child support debt the period of incarceration. The order establishing the child support may not have been enforced during incarceration because the incarcerated parent may have lacked the ability to pay. Once released, the expectation is that the individual will secure employment and continue to pay on the current obligation as well as catch up on missed payments that have been accruing statutory interest. For currently or previously incarcerated parents who owe court-ordered child support, it is important to be aware that

- Child support can be ordered for the first time, or the previous order modified, while the offender is in prison.
- Texas law authorizes withdrawals from an inmate's trust account to pay child support.<sup>194</sup>
- Court-ordered child support payments remain in effect until changed by a subsequent court order.
- Child support and medical support payments are not cancelled or suspended due to incarceration.
- Child support arrearages are not automatically reduced or discounted for ex-offenders, although the court may take into account the fact of incarceration.

Competing financial demands, problems finding employment because of a criminal history, lack of stable housing, and other factors can make it difficult for a person newly

released from incarceration to turn his or her attention to the child support debt. Yet ignoring the child support debt and allowing it to accrue can land the person who owes it back in prison. Ignoring the court’s order can cause the parent to be held in contempt of court or worse, be prosecuted for criminal nonsupport. That’s why regardless of how much is owed it is important to act on the child support matter before the courts take action against the person who owes it.

In setting or adjusting support, the court can take into account factors that may have made it difficult to make the payments as well as any other information that is relevant to the child support issues. Missed payments due to incarceration, unstable income on release, the total number of children the parent must support and whether there are multiple child support orders in place for children in different households - all of these factors can influence the amount the person who owes support might have to pay.

The law also limits the amount child support that can be deducted from a person’s disposable earnings, regardless of how much is owed. A person owing thousands of dollars in back child support can often work out payment plan on the arrearages that will be financially adjusted to reflect a parent’s lack of resources and meager income. A parent’s voluntary contribution of some nominal amount towards back child support not only shows good faith, it may forestall enforcement action for collection of the entire amount.

**Table: Other State Laws - Child Support and Incarceration**

OTHER STATE LAWS - SUSPENSION OR MODIFICATION OF CHILD SUPPORT DURING INCARCERATION	
CONNECTICUT	The court must establish or modify orders for incarcerated or institutionalized noncustodial parents that are based upon their present income in accordance with the state's child support guidelines (2003 Conn. Gen. Acts 258, §2 (2003)).
MICHIGAN	Suspension of child support charges during incarceration is an administrative process. Upon notification of a payer’s incarceration the Friend of the Court verifies the payer’s minimum sentence is at least one year and submits an order to the court stopping support. Upon the payer’s release from incarceration, the Friend of the Court verifies the release date and submits another order to reinstate the child support charges. See, e.g. <a href="#">modification information</a> for Barry County, MI. -
DISTRICT OF COLUMBIA	Criminal court judges are required to inform individuals with a support order who are sentenced to prison for more than 30 days that they may petition for modification or suspension of payments during incarceration. (Official Code, title 23, chapter 1.)

COLORADO	As of 2003, new child support orders and motions for modification in Colorado were set at \$ 50 per month where parents' monthly gross income is less than \$ 850. Parents who earn more than \$ 850 but less than \$ 1,850 per month receive a low-income adjustment calculation that will be added to minimum child support amounts of \$ 75 for one child and \$ 150 for two (14-10-115 C.R.S.)* Note - amounts may have changed.
OREGON	Rebuttable presumption that an incarcerated parent with income of less than \$200 per month is unable to pay any support. The state will reduce an order to zero if the parent requests modification and is expected to be in prison for at least six more months. Or. Admin. R. 461-200-3300 (2002). By statute, 60 days after the inmate is released, the order automatically reverts to its pre-incarceration level Or. Rev. Stat. §416.425 (2003)
MASSACHU- SETTS	Inmates meet with child support staff at intake, file a modification request, and suspend enforcement. After release, a court hearing reviews order. Massachusetts has the <a href="#">discretionary authority</a> to settle arrears accumulated during periods of unemployment or incarceration: Terms or conditions of settlement might include regular payments of current support, active participation in job search, community service, or a responsible parenthood program.
NORTH CAROLINA	North Carolina allows a child support order to be suspended with no arrears accruing "during any period when the supporting party is incarcerated, is not on work release, and has no resources with which to make the payment" (N.C. Gen. Stat. §50-15.10 (2004)).
CALIFORNIA	Under California law, child support of the incarcerated person is suspended for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated, unless the obligor has the means to pay support while incarcerated. The suspension remains in effect until release, then the payment obligation "shall immediately resume in the amount otherwise specified in the child support order." Upon release from incarceration the obligor may petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation. Family Code: 4007.5: Title IV-D cases (IV-D of the Social Security Act, 42 U.S.C. Sec. 651 et seq.)

## Duty to Support

In the legal sense, "child support" refers to court-ordered financial support for the child. The obligation to pay child support carries with it the duty to provide medical support, either through private insurance or by cash payment in addition to child support. The amount of child support and medical support are then added together to arrive at the total current monthly support obligation.

Unless parental rights have been terminated by a court order, parents have a legal duty to support their children. The duty to support exists even if:

- The parents were never married or never lived together
- The father's name does not appear on the birth certificate
- The child does not have the father's last name

- The father has little or no contact with the child

### *Leaving Texas to Avoid Payment*

Moving from the state where the child lives or the order was entered will not stop a court from enforcing a child support order, because an order issued in one state can be enforced in all others. Every state has adopted a law that gives full faith and credit to child support orders from any other state.<sup>195</sup> Texas, like most states, aggressively pursues child support and child support arrearages, even across state lines.

### *Payments Continue after Child Reaches Adulthood*

Even after the child subject to the support order reaches adulthood, the back child support debt will remain, and unpaid interest on the balance will continue to accumulate. The obligor is under a continuing obligation to pay down the child support arrearages or be subject to a enforcement proceeding which may include a finding of contempt of court, arrest, jail time and other remedies for enforcement.

## **Consequences of Failure to Support**

The consequences attached to ignoring a court order for child support can be dire. Below is a partial list.

- Violating Conditions of Release

Previously incarcerated parents released to mandatory supervision are in danger of violating the conditions of release by failing to maintain child support payments.

- State Jail Felony

Although child support orders are issued by the civil court, failure to pay pursuant to the order can have criminal consequences. In Texas, it is a state jail felony for a person to intentionally or knowingly fail to provide court-ordered child support.<sup>196</sup>

- License Revocation

A continued failure to pay can result in loss of nearly every license issued by the State of Texas, including vocational licenses and driver's licenses.

- Asset Forfeiture

Income tax returns can and often are garnished by the State and applied to the child support deficiency. Bank accounts and other assets may be seized to satisfy the debt. The child support debt also cannot be discharged in bankruptcy.

## Conservatorship and Child Support

Texas law favors the term “conservatorship” over “custody.” It is most commonly understood to mean the parent that cares for the child more than half the time. Usually both parents are appointed “joint managing conservators” of the children, which means that parents share in decision making. Nearly all custody orders carry with them the obligation to pay child support. In court orders, the joint managing conservator is typically the parent awarded the “right to determine the child’s primary physical residence” (custody) and the “right to receive periodic payments for support of the child” (child support). The joint managing conservator who pays child support and has the right of “access and possession” (visitation) of the child is the noncustodial parent (NCP).

### *Orders without “Primary Residence”*

Some recent custody orders do not give either parent the right to determine the child’s residence, ordering instead that the child reside within a certain geographical area (e.g. Travis and surrounding counties). Even if no custodial parent is appointed, one parent will usually be required to pay support to the other.

### *Nonparent Custodians*

A person who is not the parent of a child, but who has assumed parental responsibilities and duties can be named the “CP” for purposes of custody and child support. For example, a grandmother who has been the primary caregiver of her grandchild for at least six months can become the CP. In this situation, both parents would probably be named as NCP’s, and both would have a duty to pay child support to the CP grandmother.

## Calculating Child Support

Basic child support is calculated based on the NCP’S net monthly income from any and all sources, including:

- severance pay
- retirement benefits and pensions
- social security benefits other than supplemental security income (SSI), unemployment benefits
- disability and workers' compensation benefits<sup>197</sup>

### *Child Support Guidelines*

Texas has adopted child support guidelines as the legal threshold for calculating support. “Guideline” child support is considered the legal *minimum*. The NCP can always pay more than guideline support, but must have a compelling reason to pay less.



The guidelines are expressed as percentage of net monthly income. For purposes of child support, net income is referred to as “disposable earnings.” Only the standard payroll deductions may be taken to calculate disposable earnings: federal income tax, social security and Medicare.<sup>198</sup>

Guideline child support is calculated based on the following percentage of disposable earnings:

- 20% for one child
- 25% for two children
- 30% for three children
- 35% for four children
- 40% for five children
- For six or more children, the amount must be at least 40%.

#### *Multiple Family Guidelines*

The Family Code’s multiple family guidelines can significantly reduce the percentage of child support the NCP must pay. The multiple family guidelines take into account children in other households, including his own, that an NCP may have a duty to support, and reduce the percentage he must pay accordingly.

If the court is not aware of the NCP’s duty to support other children, then it cannot apply the guidelines, so it is up to the NCP to inform the court of any additional children. If the multiple family guidelines are found to apply, the NCP has a right to have his child support reduced. For example, typical guideline support for one child is based on 20% of the NCP’s disposable earnings. If the NCP has a duty to support a second child in a different household, his support obligation is reduced to 17.50% of his disposable earnings.<sup>199</sup> The Multiple Family Adjusted Guidelines are set forth in table form in section 154.129 of the Texas Family Code.

#### *Maximum Withholding*

Texas law provides that cash withholding for child support exceed 50% of disposable earnings.<sup>200</sup> Again, the change is not automatic, so if an NCP suffers a reduction in income and more than 50% is being withheld, he has the legal right to modify the child support withholding so that it does not exceed the 50% limit.

#### *Duration of Support*

Generally, the obligation to pay support lasts until the child turns 18 or graduates from high school, whichever is later. Payments can continue after the child turns 18 or graduates if:

- The “adult” child is disabled and in need of continued support
- There is unpaid “back” child support (arrearages)
- The child is now over age 18 and successfully sues for retroactive support.<sup>201</sup>

## Medical Support

Parents also have a duty to provide medical support for minor children. A court can order the NCP to:

- Add the children to her health insurance plan
- Reimburse the CP for the cost of carrying the children on her health insurance plan.
- Pay the cost of insuring the children through CHIP
- If the children receive Medicaid, pay cash medical support to the CP in addition to child support.

### *Private Health Insurance*

If private health insurance is available to either parent, the court can issue an order to the directing the parent’s employer to provide health insurance coverage for the employee’s child.<sup>202</sup> Most people exiting the prison system following a period of incarceration do not have access to private health insurance. In fact, regardless of offender status, less than 50% of Texans have access to employer-based health insurance.<sup>203</sup>

### *CHIP and Medicaid*

If neither parent has private health insurance, the court can order a parent to enroll the child in either CHIP (Children’s Health Insurance Program) or Medicaid. Eligibility for both programs is based on family income. CHIP provides health insurance for families who cannot qualify for Medicaid, but cannot afford other health insurance. Medicaid is an entitlement program created to pay the medical bills of low-income people and increase access to health care.<sup>204</sup> Every state has a Medicaid program, and everyone who is eligible is entitled to services. Since implementation is left to each state, there are variations in the eligibility, benefits, reimbursements and other details of the program among states.

### *Cash Medical Support*

Unlike child support, cash medical support is calculated based on a percentage of gross monthly income. The percentage of gross income applied to medical support payments is periodically adjusted, but is usually between 5% and 9% of the NCP’s gross income.<sup>205</sup>

## Retroactive Support and Arrearages

### *Retroactive Support*

In addition to basic child support and medical support, a court can order an NCP to pay retroactive support and/or child support arrearages (back child support).

Retroactive child support:

- may be ordered in cases where there is no prior order establishing child support;
- may be ordered in cases where the parent did not provide voluntary support;
- Is not required but left to the judge's discretion;
- can date back to birth of the child;<sup>206</sup>
- is in addition to and expressed as a separate amount added to current child support
- a *maximum of 4 years'* worth of retroactive support is both reasonable and fair, unless it is in the best interest of the child to order more than four years.

The court may consider factors such as whether the NCP knew the child was his but did not support the child, and whether ordering retroactive support would impose an "undue hardship" on top of the regular support obligation.<sup>207</sup> Retroactive support is expressed in the court's order as a money judgment plus interest, to be paid in installments along with regular child support, until the judgment is paid in full.

### *Child Support Arrearages*

Child support arrearages are also referred to as "back child support" or unpaid child support, represent the amount of support owed that has not been paid. In a typical case, the missed payments are consolidated into a single lump sum, plus interest (usually 6%) and "confirmed" by the court as a money judgment. The NCP is expected to pay some preset amount towards this debt along with the amount ordered for current child and medical support, and sometimes retroactive support. Like retroactive support, it is expressed as a judgment to be paid in installments along with current child support.

Regarding child support arrearages:

- Statutory interest on child support cannot be waived by either of the parties, by agreement or by the court, or by Domestic Relations.
- Texas law allows for child support arrearages and interest to continue until all amounts are paid in full regardless of the age or marital circumstances of the child(ren).
- Texas law allows income withholding to continue until all arrearages is paid in full, regardless of the age or marital circumstances of the child(ren).

## Employer Withholding and Disbursement

A court order for child support is usually accompanied by an Order to Withhold Earnings for Child Support (Withholding Order). This is a separate court order to employers ordering them to withhold the amount(s) specified in the order and forward the payments to the Texas State Disbursement Unit (TXSDU) in San Antonio, Texas. The TXSDU will then distribute the child support payment to the CP, usually by direct deposit or debit card. TXSDU maintains an account of all payments. If the NCP is self-employed, child support payments must be made directly to TXSDU.

## Setting Child Support - Other Factors

### *Resources of CP*

Texas law does not require the court to take into account the income or resources of the CP, even if the CP earns much more than the NCP.<sup>208</sup>

### *Unemployment and Underemployment*

If the NCP's income is unknown, or if she is able to work but unemployed, guideline child support is usually will be based on minimum wage (currently \$7.25 per hour) for a 40-hour week.<sup>209</sup> As earlier noted, the court is entitled to consider other factors in setting child support or confirming back child support, including a parent's period of incarceration or illness that caused unemployment or underemployment that affected the ability to pay.

Unemployed NCPs owing support can be ordered to participate in state-sponsored work activities and job training.<sup>210</sup> If a NCP does not work up to her earning potential or is *intentionally* underemployed in order to avoid support payments or an increase in support, the is entitled to base the support on the NCP's earning ability and skills rather than what he or she is currently bringing in as income.<sup>211</sup>

The court is also entitled to average the income of the NCP. If the NCP's income changes from month to month or year to year, the court can add the income together and calculate support based on an average monthly income.<sup>212</sup>

## Modifying Child Support

Once a child support order is entered, it can only be changed by a subsequent court order. In Texas, the process of changing the order is called a modification. There is no limit on the number of times a child support order can be modified. It is not unusual to have several

modifications before a child reaches adulthood, reflecting changes in income and circumstances affecting the child or parents.

The amount of support stated in the child support order -- which can include four separate payments of regular child support, cash medical support, arrearages and retroactive support -- will continue to accrue until one of the parents or the OAG takes some action to change it. Loss of a job, incarceration, and other life events will not change the order.

#### *Grounds for Modification*

Either party to a child support order<sup>213</sup> can modify an existing child support order if it can be shown that:

- It has been three or more years since the order was established or last modified **and** the monthly amount of the child support ordered differs by either 20 percent or \$100 from the amount that would be awarded according to child support guidelines, or
- A **material and substantial change in circumstances** has occurred since the child support order was last set.<sup>214</sup>

Examples of a material and substantial change are usually because

- A party's income has either increased or decreased.
- A party is legally responsible for additional child(ren) since the last order.
- The child(ren)'s medical insurance coverage has changed.
- The child(ren)'s living arrangements have changed.

#### *Incarceration and Release as Grounds to Modify*

Incarceration, and release from incarceration, both qualify as a "material and substantial" change in circumstance that a court can consider in changing the current payments and deciding how much should be paid towards back child support (arrearages).

For instructions on how to request a child support modification from the OAG during incarceration, please refer to

### **Appendix M: Request to Lower Child Support -Incarcerated Parent (OAG)**

#### **The Modification Process**

Generally, a person who wants to modify a Texas child support order has two options: request a "status review" from the OAG or file a lawsuit called a "Petition to Modify in Suit Affecting Parent-Child Relationship" (SAPCR). If the modification is agreed upon by the parties,

the papers can be signed without a court hearing. If the modification is contested must be set for hearing before the court.

### *Continuing Jurisdiction*

Once a Texas court enters an order concerning a child, that court becomes the “court of continuing jurisdiction and retains the authority to make subsequent orders concerning the child. If there is already a child support order, the petition to modify it must be filed in the court where the first child support order or decree of divorce was entered.

If the last order was entered as part of an OAG proceeding, or the child is receiving public benefits, the person seeking modification should ask the OAG for a “status review.” A change of status review is a form request to the OAG requesting a modification of current support. For a change of status review form, please refer to

### **Appendix N: OAG Form to Request Child Support Review**

The other option is to file a Petition to Modify in Suit Affecting the Parent Child Relationship (SAPCR) in the court of continuing jurisdiction.

### **Texas Attorney General (OAG) Cases**

The Texas Attorney General – Child Support Division (OAG) is the state agency charged with establishing, enforcing, and reviewing child support orders. The OAG represents the legal interests of the State of Texas, and is not on either “side” of case.

### *IV-D Cases*

If the CP is receiving public benefits like Medicaid, the right to pursue child support is automatically assigned to the OAG.<sup>215</sup> If the CP is not receiving child support, the OAG can step in to enforce the NCP’s legal duty to provide it, as well as recoup the part of the cost of public benefits expended on CP. Note that:

- A custodial parent who receives public benefits cannot terminate the OAG’s services.
- The OAG can pursue child support against the other parent regardless of the wishes of the custodial parent.
- OAG services are available to anyone who applies, but public assistance cases are given priority.

As with all child support cases, the OAG retains right to enforce unpaid child support until the debt is paid in full, even after NCP’s current support obligation ends (usually the child’s 18<sup>th</sup> birthday or graduation from high school, whichever is later).

Below is a comparison modification through the OAG or by filing a petition to modify with the help of an attorney.

### Options for Child Support Modification

OAG CHILD REVIEW	MODIFICATION
Services are free	Attorney needed unless <i>pro se</i> (self-represented)
OAG represents the interests of the State of Texas, not the child or parent	Attorney represents interest of client/parent
Hearing usually in child support (IV-D) court	Hearing usually in district court
If child is on Medicaid, OAG will include cash medical support in addition to child support	Child usually carried on one parent's health insurance and other parent ordered to reimburse cost of coverage for child.
Less flexibility in setting support outside of statutory guidelines	More flexibility in setting non-guideline child support
Will only address child support, not access/possession (visitation) issues	can modify other child-related issues (such as visitation) in addition to child support
Large backlog of cases may delay review for modification	No case backlog, faster path to modification.
OAG prioritizes cases where child, parent or both are receiving public benefits	No case priority based on receipt of public benefits

#### *Steps to Modify Child Support (Non-OAG):*

If a person does not want to go through the OAG to modify support, or wants to change the terms of access and possession (visitation) he should find an attorney to represent him in the modification proceeding. If attorney services are out of financial reach, he can exercise his Constitutional right of access to the courts by acting as his own attorney (*pro se*). The court process is different in each county, but certain steps must be taken in all non-OAG modification lawsuits.

For a sample Petition to Modify Child Support and Order, please refer to refer to

#### **Appendix O: Sample Petition to Modify and Order (Non- OAG)**

### Child Support Enforcement

There is no predetermined amount of unpaid child support that will trigger a lawsuit to enforce payment. The court can enforce child support regardless of whether the NCP<sup>216</sup> is behind in payments for a month, a year, or a decade. Depending on the frequency of support payments (monthly, bimonthly, weekly or biweekly) a suit to enforce child support can be

brought after a single missed payment, usually are not filed until several payments have been missed.

A suit to enforce payment of the unpaid child support can be filed even after the current support obligation ends (usually the child's 18<sup>th</sup> birthday or graduation from high school, whichever is later).

### *Sources of Unpaid Support*

The following sources can be seized or withheld for unpaid child support:

- Inmate trust account
- Wages and overtime wages
- Income Tax Refunds
- Social Security Payments
- Unemployment Compensation
- Worker's Compensation
- All other sources of income, including overtime wages and self-employment income, (except some types of disability payments)

The court can enforce child support through other means, including filing a lien on property and bank accounts.

### *License Suspension*

Failure to maintain support can result in suspension or revocation of licenses, including:

- Driver's licenses
- Most vocational licenses (check with the [TDLR](#) for a specific occupation)
- Professional licenses

### *Enforcement Hearing*

The only issue on the table in a child support enforcement hearing is the NCP's present ability to support. Visitation, parenting skills and other issues are relevant only as they relate to the support of the child. Previously incarcerated people should be up-front about their offender status and inform the court of how this affected their ability to maintain child support payments.

Before the hearing, the person sued for enforcement should gather proof of current income and expenses and have some idea of what to suggest as payment towards current support and arrearages. The court will not expect a person just released from incarceration to come up with the entire balance at the enforcement hearing. The court may reduce the current



support obligation or minimize payments on arrearages in order to balance the payment with the parent's life circumstances.

### *Contempt of Court*

A motion for enforcement often carries with it a request to hold the delinquent parent in contempt of court. Contempt is a legal term that means a court order is not being followed. In a child support case, a payor can be held in civil contempt for disobeying a previous order to pay child support. Civil contempt in a child support case carries up to six months of jail time and \$500 for each violation, in addition to attorney's fees and court costs. A violation is a missed payment.

Unlike criminal prosecutions, there is no right to counsel in civil matters. Parties must hire lawyers or represent themselves. If a suit to enforce child support alleges contempt of court, the party threatened with contempt may be entitled to a court appointed attorney if:

- The person has little or no income to hire a lawyer, and
- The person will likely be placed in jail as a result of the hearing.

### *Defenses to Nonpayment*

The Family Code recognizes two defenses to nonpayment of child support: when the child lives with the parent owing support and the parent's inability to pay the amount of support ordered. Lack of ability to pay is difficult to prove. The person owing support must prove that he:

- lacked the ability to provide support in the amount ordered;
- had no property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;
- actually attempted to borrow the funds needed but was unsuccessful; AND
- knew of no source at all from which you could have borrowed or obtained the money by ANY legal means.<sup>217</sup>

Partial payments of child support are taken into consideration by the court when considering sanctions for failure to pay support. Payment of some amount towards the child support obligation is always preferable to no payment at all.

It is also a defense to nonpayment if the child has come to live with the parent who is ordered to pay support. This defense is available only if the child is in the payer's possession. If the other parent sent the child to live with someone else other than the payor, this defense cannot be raised.

*Criminal Nonsupport*

A person can be criminally prosecuted for intentional and knowing failure to pay child support. In a criminal case, including a prosecution for nonpayment of child support, the person being prosecuted is entitled to court-appointed counsel. Criminal nonsupport is a state jail felony.<sup>218</sup> A felony conviction is sufficient to deport someone who is not a citizen of the United States.

## 12. Education

Education increases employment opportunities for all people, including those with a criminal record. Federal Student Financial Aid provides the resources that enable those with limited resources to have access to quality higher education. A conviction does not automatically render a person ineligible for federal aid. A person who, because of her criminal history is rendered ineligible for federal student aid may still qualify for federal aid from some states and private institutions. Federal Student Aid consists of:

- Stafford Loans
- Graduate PLUS Loans
- Consolidation Loans
- Federal Supplemental Educational Opportunity Grants (FSEOGs)
- Federal Work-Study
- Federal Perkins Loans
- Pell Grants

### Eligibility for Texas Financial Aid

Basic federal education grants are not available to those who are incarcerated in federal or state prisons and to those convicted of certain drug-related offenses. Aside from these limited exceptions there is no lifelong ban on the receipt of federal financial aid because of a person's criminal history.<sup>219</sup> States are free to place limitations on state-based student aid that are more restrictive than the federal law.

#### *Drug Related Offenses*

Students who have been convicted of "any offense under any Federal or State law involving the possession or sale of a controlled substance" can become temporarily or permanently ineligible for federal loans or grants.<sup>220</sup> The table below shows ineligibility periods for drug offenses:

**Table: Length of Ineligibility for Federal Financial Aid - Drug Convictions**

	<i>Drug Possession</i>	<i>Drug Sales</i>
First offense	One year	Two years

Second offense	Two years	Indefinite
Third offense	Indefinite	Indefinite

Exceptions to the above provisions can change a student’s eligibility status despite a conviction for drug possession or sale:

- Convictions that have been dismissed or expunged, and juvenile court delinquency findings, do not disqualify a candidate<sup>221</sup>
- The disqualification ends if the conviction is reversed.
- A student whose eligibility has been suspended may resume eligibility before the end of the eligibility period if the student successfully completes a drug rehabilitation program that is approved by the Secretary of Education and includes at least two unannounced drug tests.

*Conviction after Scholarship*

State education funding can also be lost as a result of a criminal conviction that occurs after the student has been qualified for a higher education scholarship. A person who commits a felony or Class A misdemeanor, or an offense under the Texas Controlled Substances Act, forfeits a prepaid higher education scholarship.<sup>222</sup> The offenses that will result in forfeiture of a scholarship include:

- offenses of possession of marijuana,
- possession or delivery of drug paraphernalia, and
- falsification of drug test results.

*Eligibility for Texas Grants*

The eligibility for Texas grants mirrors the drug-related offense exclusions under federal law. A person is not eligible to receive a TEXAS grant or TEXAS II grant for two years after completing a sentence for a felony or an offense under Chapter 481 of the Health and Safety Code, per Education Code §§ 56.304 and 56.354. Moreover, Education Code §§ 56.305 and 56.355 render one ineligible to continue to receive a TEXAS grant or a TEXAS II grant if already receiving one when convicted. This apparently would include Class B and C misdemeanors under the Texas Controlled Substance Act.

*Zero Tolerance Policies*

Many schools have adopted “zero tolerance” policies that cover any type of criminal offense, not just those that occur on campus or at sponsored activities. Any criminal conviction

or deferred adjudication could grounds for disciplinary action or loss of school benefits depending on school policy. Most universities have disciplinary codes that allow for denial of degrees and expulsion for violations of criminal statutes.<sup>223</sup>

## NonProfit Community Colleges

Nonprofit Community colleges are a good place to start exploring and training for a new trade or profession. Most have open admissions policies, local campuses, and tuition far lower than that of for-profit schools. For a list of every community college in Texas and in the United States (including links to each school), click [here](#).

## Proprietary and for-Profit Colleges and Universities

Formerly incarcerated people have several options for higher education: colleges, universities, community colleges and proprietary (for profit) schools. A senate investigation on released in June 2012 ("[For Profit College Investigation](#)") revealed that many for -profit college companies use misleading tactics to lure students into certificate and associate degree programs that cost, on average , *six times* the cost of similar programs in community colleges. Among the 30 colleges identified in the study were the University of Phoenix, DeVry, ITT, Bridgepoint, Apollo, and National American University.<sup>224</sup>The study also showed that

- Many used aggressive recruiting tactics, and recruiters often hide the ball on matters of cost, transferability of credits, graduation rates, and employment and salary after graduation.
- Fifty-four percent of students who enrolled in the 2008-2009 school year withdrew by summer 2010.
- Close to one in four students who attends a for-profit school defaults on his or her federal student loans within 3 years of leaving school. These schools reenroll 10 percent of American higher education students but account for nearly 50% of all student loan defaults.
- Colleges claimed that their schools were accredited when they were not. Accreditation can affect whether the graduate can apply for a vocational license in their chosen profession.

Before enrolling in a proprietary school or applying for financial aid, prospective students should do their homework:

- Research the school's accreditation with the [Texas Higher Education Coordinating Board](#).

- Contact the state licensing office for that vocation, or Texas Department of Licensing and Regulation, to find out if the training or diploma will be accepted by the licensing board for that particular profession.
- Find out if credits can be transferred from the college to another college or university
- Get a clear picture on how much tuition and fees will be over the course of the entire degree program, how much of tuition must be borrowed, the interest rate and how long it will take to pay off the loan(s).!
- Know in advance if the course have actual classrooms and campus or will be taught through distance learning. If taught online , see if the classes will be taught in real time and are interactive (allowing the student to communicate with the instructor)..

### **Resources**

College Grants - The Texas Higher Education Coordinating Board helps students find financial aid. <http://www.collegefortexans.com/>)

## 13. Voting and Selective Service

Civic participation includes all the ways citizens participate in the democratic process. It includes the right to vote, serve on a jury, and run for elected office. This section addresses eligibility to vote, registration requirements, selective service and jury duty.

### Selective Service Registration

The Selective Service system is how the United States maintains information for a military draft. Almost all males between the ages of 18 and 25 are required by law to register. Incarcerated or hospitalized men must register *within thirty days after their release*.

#### *Consequences for Failure to Register*

##### Fines and Penalties

Failure to register carries with it a fine of up to \$250,000 and/or up to five years' imprisonment for failure to register. During peacetime, the regular maximum penalty is a \$2,500 fine and up to four months imprisonment. Immigrant men are not eligible for citizenship without registering.

##### Government Programs and Education

Registration for Selective Service is linked to federal programs and benefits, including:

- federal student loans and grant programs
- federal job training under the Workforce Investment Act
- federal jobs or security clearance as a contractor
- U.S. citizenship

#### *Registration Methods*

Registration for the selective service may be accomplished:

- Online with the registrant's social security number at [www.sss.gov](http://www.sss.gov),
- On the application for Federal Student Financial Aid (FAFSA),
- In person when renewing or applying for a driver license's or Texas identification card,
- By completing a "mail-back" registration form available at any U.S. Post Office.

### Status Information Letter

#### *First-Time Registration if Over 25*

Males over 26 years old who never registered for Selective Service between the ages 18-25 are not eligible to receive financial aid and other benefits tied to selective service

registration unless they can show special circumstances as to why they failed to register during the age window. Incarceration can be a “special circumstance.” If failure to register was due to incarceration or for some other reason, the applicant must complete and return a “Request for Status Information Letter.” Because the previously incarcerated person is expected to register within thirty days after release, proof of incarceration dates alone may not be sufficient; the individual should consider including reasons why he missed the 30-day post-incarceration window. A Request for Status Information Letter form and instructions, is available at

**Appendix P: Request for Status Information Letter**

*Status Information Letter Not Required*

A status information letter is not required for men who are in the categories in the table below:

**Table: Documents in Lieu of Status Information Letter - Categories**

<b>No Status Information Letter Required</b>	<b>Documents Required in lieu of Status Information</b>
A male born prior to 1960	Official government issued document showing date of birth such as state ID card, driver’s license, passport, birth certificate.
A Veteran	DD-214 or current fulltime active duty orders, military ID card. <sup>225</sup>
Non-U.S. Male arriving in US for the first time after his 26 <sup>th</sup> birthday	Date of entry stamp in his passport, I-94 with date of entry stamp on it, or a letter from the U.S. Citizenship and Immigration Services (USCIS) indicating the date the man entered the United States. If the men entered the U.S. illegally after his 26 <sup>th</sup> birthday, he must provide proof that he was not living in the U.S. from age 18 through 25. Resident Alien Card (Green Card) is not valid as proof of the date of entry to the United States.
Non-U.S. Male on a valid non-immigrant visa	For example, if the man entered the United States as an F-1 student visa and remained in that status until his 26 <sup>th</sup> birthday, he would need to provide documentation indicating that he was admitted on an F-1 visa and attended school full-time as required. Acceptable documentation for this situation include a copy of his I-20 form or a letter from the school he attended indicating his full-time attendance as a non-immigrant alien. The same thing applies for all non-immigrant statuses.

**Voting**

The laws governing voting rights of incarcerated and formerly incarcerated persons vary widely from state to state.<sup>226</sup> Previously, felony convictions in Texas resulted in lifetime prohibition against voting. Today, an otherwise qualified voter who has been finally convicted of a felony may vote if he has completely discharged his sentence, including incarceration,



parole or probation, or been pardoned. When these requirements have been met, a formerly incarcerated person is once again eligible to vote and may register with the voter registrar in the county of residence.

### *Texas Voter Identification Law*

As of this writing, Texans are not required to show a photo ID when they go to the polls.<sup>227</sup>

### *Eligibility to Vote*

To be eligible to register to vote in Texas, a person must be:

- A United States citizen;
- A resident of the Texas county in which application for registration is made;
- At least 18 years old on Election Day;
- Not finally convicted of a felony, or, if so convicted must have (1) fully discharged the sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or (2) been pardoned or otherwise released from the resulting disability to vote;<sup>228</sup> and
- Not determined by a final judgment of a court exercising probate jurisdiction to be (1) totally mentally incapacitated; or (2) partially mentally incapacitated without the right to vote.

### *Voting Rights and Deferred Adjudication*

Texas law recently clarified the law as it relates to the voting eligibility of people who have who have received deferred adjudication. The Texas Election Code described a qualified voter as a person who had not been finally convicted of a felony. A deferred adjudication is not a final conviction for purposes of voting eligibility.<sup>229</sup>

### *Voter Registration*

In most Texas counties, the County Tax Assessor-Collector is also the County Voter Registrar. In some counties, the County Clerk or County Elections Administrator registers voters. A person can also register to vote when applying for or renewing a Texas driver's license. Once the form is completed it can be mailed postage-free to the [County Voter Registrar](#), or hand-delivered.

For a voter registration application, please refer to:

## **Appendix Q: Application for Voter Registration**

### *Deadline for Application*

The application must be received in the County Voter Registrar's office or postmarked 30 days before an election in order to vote in that election. The voter registration certificate will arrive by mail for the voter to take to the polls when voting.

### *Identification Required to Register to Vote*

To register to vote in Texas, the registrant must provide a Texas driver's license number or personal identification number issued by the Texas Department of Public Safety AND the last four digits of the voter's social security number. A voter who does not have a social security number and a DPS-issued driver's license or identity card may register to vote, but must submit proof of identification when voting. Acceptable identification includes:

- a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;
- a form of identification containing the person's photograph that establishes the person's identity;
- a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;
- United States citizenship papers issued to the person;
- a United States passport issued to the person;
- official mail addressed to the person by name from a governmental entity;
- a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
- any other form of identification prescribed by the Secretary of State.

### *Voter Registration Certificate*

- After applying, a voter registration certificate (proof of registration) will be mailed within 30 days.
- The voter should correct any mistakes on the registration by making corrections to the registration certificate and returning it to the voter registrar immediately.
- If the voter certificate is lost, contact the county voter registrar in writing for a new one.
- The voter will automatically receive a new certificate every two years by mail to the address listed on the previous registration.

### *Change of Address*

If the voter moves within the same county where she is registered to vote, she can:

- [change the address online](#)
- complete a new voter registration application form and checking the "change" box
- change the address for voter registration and driver's license at the same time at the driver's license office.

A new certificate with the new address will be mailed to the voter.

### *Where to Vote*

A voter's residence is located in a specific "precinct," which is an area within the county. Polling places are usually listed in local newspapers before an election and are also available online on the [website for each county](#). A voter who moves to another county must re-register by filling out a new application for voter registration. The voter will be registered in the new county 30 days after the application is submitted, and will receive a new voter certificate.

### **Jury Service**

A person is *absolutely disqualified* from serving on a Texas jury or grand jury if they have been convicted of misdemeanor theft or a felony; or are under indictment or other legal accusation for misdemeanor theft or a felony.<sup>230</sup> A prospective juror may be challenged "for cause" (may be excluded as a juror at trial by either party) if convicted of "theft or any felony."<sup>231</sup>

A person is *not* disqualified as a result of a misdemeanor theft charge or a felony if:

1. the person has successfully completed a deferred adjudication,
2. the person has completed a term of probation and the conviction has been dismissed under [Tex. Code Crim. Proc. Ann. art. 42.12, § 20](#)

If the person is *currently serving* a term of deferred adjudication supervision for a felony or misdemeanor theft, they are disqualified because they are still under the legal accusation.

### **Resources**

Registering to Vote:

Texas Secretary of State:

<http://www.sos.state.tx.us/elections/voter/reqvr.shtml>.

<http://www.sos.state.tx.us/elections/voter/votregduties.shtml>

## 14. Collateral Consequences of Conviction

Collateral consequences are the legal disabilities that attach as an operation of law when an individual is convicted of a crime, but are not part of the sentence for the crime. Examples include denial of government issued licenses and ineligibility for public services and public programs. Sentencing judges and lawyers may not be aware of the collateral consequences that can hamper efforts towards effective and successful reentry.

Collateral consequences attached to criminal convictions vary widely by state. The table below is a partial listing of collateral consequences of conviction under Texas and federal law:

**Table: Collateral Consequences of Conviction**

### COLLATERAL CONSEQUENCES OF CONVICTION

	OFFENSE(S)	CONSEQUENCE	SOURCES
<b>VETERANS</b>	Espionage, treason, mutiny, sabotage, rendering assistance to an enemy	Lifetime ineligibility for all benefits	38 USC 6105(a),(b)
	Felonies & misdemeanors	Military Pension – No pension paid after first 60 days incarceration  suspended during incarceration  Pension paid to inmate’s spouse/ children, if any.	38 USC. 1505(a);  38 USC.1505(b)
<b>HOUSING</b>	Sex Offender subject to lifetime registration	Federally assisted housing- Ineligible	42 USC 13663
	Any offense -violation of probation or parole.	Federally funded public housing- Eviction  Lifetime Ineligibility  Subject to eviction for suspicion of	42 USC 1437f(d)(1)(B)(v)(II);  42 USC 1437d(k).

		drug related or criminal activity - no conviction	
<b>FOOD STAMPS</b>	Drug offenses (after Aug. 1996)	Supplemental Nutrition - Lifetime Ineligibility  Benefit received by household with ex-offender proportionally reduced.	21 USC 862a(a).(b),(d)(2)
<b>TANF</b>	Drug offenses (after Aug. 1996)	Supplemental Income- Lifetime Ineligibility  Benefit received by household with ex-offender proportionally reduced.	21 USC 862a (a),(b),(d)(2)
<b>VOTE</b>	Any felony conviction	Constitutionally Ineligible Until fully discharged or pardoned  Subject to any exception the Texas legislature may make.	Tex. Const. Art. 6 §1;  Tex. Elec. Code Art 11.002
<b>NAME CHANGE</b>	Any felony conviction	Not eligible if on parole or under supervision. Fingerprint card and criminal history must accompany Petition; may be denied if not in public interest	Tex. Fam. Code §§ 45.102; 45.103
<b>VOCATIONAL LICENSE</b>	Felony or misdemeanor directly relating to the duties of the licensed occupation.	Suspend, revoke, or deny licensure; Depends on license and action taken. Applies to a wide variety of licensed occupations	Tex. Occupations Code
<b>DRIVING PRIVILEGES</b>	Intoxication manslaughter	Automatic one year suspension.	Tex. Penal Code §49.08  Tex. Transp. Code §521.341
	DWI with a child passenger	Automatic one year suspension	Tex. Penal Code §49.045  Tex. Transp. Code §521.341
	Drug offenses under the Texas Controlled Substance Act	Automatic 180 days minimum suspension, must complete drug education program before suspension lifted.  Offenders under 21 - suspension from 180 days up to 1 year	Tex. Trans. Code §521.372; §521.342

Intoxication assault	Automatic one year suspension.	Tex. Penal Code §49.07 Tex. Transp. Code §521.341
Criminally negligent homicide (with a motor vehicle, and any state jail felony with a motor vehicle offense involving personal injury or death)	Automatic one year suspension.	Tex. Penal Code §19.05; Tex. Transp. Code §521.341
Graffiti	Discretionary one year suspension for conviction or probation	Tex. Penal Code §28.08 Tex. Transp. Code §521.320
Racing	Mandatory one year suspension. If under 18 must perform 10 hours of community supervision and can have an occupational license only for attendance to school.	Tex. Transp. Code §§545.420(a); Tex. Transp. Code §521.350
Acquiring motor fuel without payment-theft	Coupled with an affirmative finding pursuant to Art. 42.019 Tex Code Crim. Proc.-automatic 180 suspension first offense, 1 year for second offense.	Tex. Penal Code §31.03 Tex Code Crim. P. Art. 42.019 Tex. Transp. Code §521.349
Furnishing alcohol to a minor	Automatic 180 day suspension first offense, 1 year second offense.	Alcohol Beverage Code §106.06, Tex. Transp. Code §521.351
<ul style="list-style-type: none"> <li>○ Possession of fake driver's license</li> <li>○ Allowing another to use one's driver's license</li> <li>○ Possessing more than one driver's license</li> <li>○ Falsifying information on driver's license application</li> <li>○ Use of a driver's license to represent one is over 21 when they are not</li> </ul>	Mandatory but duration determined by the court, suspension for not less than 90 days nor more than 1 year.	Tex. Transp. Code §§521.451; 521.453; §521.346

	o Fake license plate or Safety inspection certificate,)	Automatic 180 day suspension.	Tex. Transp. Code §§502.409(a)(4); 548.603(a)(1);521.4366
	Evading arrest or detention §38.04,	Automatic one year suspension.	Tex. Transp. Code §521.341
	Tampering with a government record-motor vehicle registration or license plate	Automatic two year suspension.	Tex. Penal Code §37.10 Tex. Transp. Code §521.346
	DWI (minor under 21) §49.04 Tex. Penal Code	Automatic 1 year suspension - 90 day to one year suspension if set by the court.  Note: DPS automatically suspends for one year, unless vehicle equipped with an ignition interlock device.	Tex. Code Crim. P. art. 42.12 §13(n)(1)  Tex. Transp. Code §§521.342 521.344.
	Purchase or attempt to purchase, possession or consumption of alcohol by a minor	Automatic 30 days suspension first offense unless deferred, 60 days second offense, 180 days. Third offense. Prior order of deferred disposition is considered a conviction for enhancement purposes	Alcohol Beverage Code §106.071;  §106.071(f)(2)
	Multiple traffic violations,	Suspension	Tex. Trans. Code §521.292; 37 Tex. Admin. Code §15.82
	Offenses involving commercial driver's license	Suspension	Tex. Transp. Code §522.081; 37 Tex. Admin. Code §15.82
	Certain Sex Offenses,	If required to register per Ch. 62 Tex. Code Crim. Proc. and fail to apply for a renewal per Tex. Code Crim. Proc. Art. 62.060, license revoked until driver comes into compliance.	Tex. Trans. Code §521.348
<b>DRIVER</b>	1st Driving While Intoxicated (DWI) Offense	Driver Responsibility Program - offenses occurring after September 1, 2003. Texas or out-of state conviction \$1,000 per year for 3 years	Ch. 708 Tex. Transp. Code.

	Subsequent DWI	Driver Responsibility Program - offenses occurring after September 1, 2003.  Texas or out-of state conviction \$1,500 per year for 3 years	Ch. 708 Tex. Transp. Code.
	DWI with blood alcohol concentration of 0.16 or more Texas or out-of state conviction	\$2,000	
	No Insurance	\$250	
	Driving While License Invalid	For example: license is canceled, suspended, or revoked \$250	
	No Driver License	For example: no driver license, expired license, no commercial driver license, or endorsement violations \$100	
<b>EDUCATION</b>	Students convicted of “any offense under any Federal or State law involving the possession or sale of a controlled substance”	May be temporarily or permanently ineligible for federal loans or grants for one year from first possession offense to indefinite period for a third possession, or second sale, offense. Convictions dismissed or expunged and juvenile court delinquency  Findings do not disqualify a candidate	Drug Free Student Loans Act of 1998, 20 USC 1091(r),  2002; 20 USC 1091(r) (2) (B).
	Felony or Class A misdemeanor drug offense.  Includes Class B and C  Misdemeanors under Texas Controlled Substance Act if receiving grant when convicted.	Includes possession of marijuana, possession or delivery of drug paraphernalia, falsification of drug test results.  Texas education funding forfeited - prepaid higher education  scholarship. Ineligible to apply or continue to receive TEXAS grant or TEXAS II grant for two years after completing a sentence for a felony or an offense under Chapter 481.	Ch. 481 Texas Health & Safety Code (Texas Controlled Substances Act)  Texas Edu. Code §§54.633  56.304, 56.354.  If convicted when receiving - §§ 56.305 and 56.355



<b>FIREARMS</b>	All felony convictions	<p>Texas: Prohibits a convicted felon from possessing a firearm unless discharged from probation with order setting aside conviction</p> <p>With “early discharge order” pursuant to art. 42.12 §20 not subject to restrictions of §46.04(a) Tex. Penal Code – felon in</p> <p>Possession offense.</p> <p>Conviction affects ability to obtain a concealed handgun license.</p> <p>Can possess gun at residence after 5 years from release from confinement or community supervision, parole or mandatory supervision, whichever is later.</p> <p>Federal: Bans possession, shipping, receiving, or transporting firearm or ammunition by person convicted of offense with a maximum punishment of more than one year in prison.</p>	<p>§ 46.04 Tex. Penal Code; Art. 42.12 § 20, Tex. Code Crim. Proc.</p> <p>Tex.Gov. Code § 411.172 et seq.</p> <p>Tex. Penal Code 46.04</p> <p>18 USC 922(g) and (n).</p>
	Misdemeanor Assault with Family Violence	<p>Texas: Class A misdemeanor conviction for misdemeanor family violence assault - illegal to possess firearm before the fifth anniversary of the later of: (1) the release from confinement or (2) the date of discharge from probation.</p> <p>Federal: Misdemeanor conviction of domestic violence - prohibited from possessing, shipping, receiving, or transporting a firearm.</p>	<p>22.01 Tex. Penal Code</p> <p>18 USC 922(g)(9).</p>

<b>FEDERAL OFFICE / EMPLOYMENT</b>	All Felony convictions	Various federal statutes provide that a conviction may result in the loss of or ineligibility for office. For example, conviction of treason renders the defendant incapable of holding any office under the United States.	18 U.S.C. ' 2381.
	extortion, bribery, conspiracy to defraud the United States, making false entries...	dismissal from office or discharge from employment of any officer or employee of the United States acting in connection with any federal revenue law who is guilty of extortion, bribery, conspiracy to defraud the United States, making false entries, or another enumerated offense	(26 U.S.C. ' 7214(a)).
<b>ARMED FORCES</b>	Any felony	An individual convicted of a felony is ineligible to enlist in any service of the armed forces.(Unless an exception is made)	10 U.S.C. ' 504.
<b>LABOR ORGANIZATION</b>	robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, drug violations, murder, assault with intent to kill, rape, and certain offenses relating to a labor organization or employee benefit plan	disqualifies an individual from serving in any of a wide range of capacities relating to a labor organization or an employee benefits plan, including consultant, adviser, officer, director, trustee, business agent, manager, or member of the labor organization=s governing board for 13 years after conviction or until the end of such imprisonment, whichever is later, unless the sentencing court sets a shorter period of no less than three years.	29 U.S.C. " 504, 1111

<b>IMMIGRATION</b>	Crime involving moral turpitude	An undocumented immigrant is ineligible for admission to the United States if he or she has been convicted of (or admits committing) a crime involving moral turpitude (unless the immigrant was younger than 18 when the crime was committed, he committed only one crime, the penalty for which was less than one year's imprisonment and a sentence of six months or less was imposed, and the crime was committed (and the immigrant was released from confinement) more than five years before applying for admission) or multiple offenses for which the aggregate sentences to confinement were five years or more.	8 U.S.C. " 1182(a)(2)(A), (B).
<b>FAMILY</b>	Felony conviction, or/and served one year or more in prison	In addition to no-fault grounds, the court may grant a divorce in favor of the spouse without the felony conviction if the convicted spouse was convicted on the testimony of the other spouse.	Tex. Fam. Code §6.004

### Uniform Collateral Consequences Act

The Uniform Collateral Consequences Act (UCCA) is a proposal of the Uniform Law Commission to encourage States to provide some uniformity and information among the states that would allow previously incarcerated people to gain partial relief from these consequences.

The UCCA was completed by the Uniform Law Commission in 2009 and amended in 2010. The American Bar Association approved the Act in 2010.<sup>232</sup> At this writing, the Act has been adopted by a single state (North Carolina), and is under legislative consideration in Minnesota, New York, Vermont, West Virginia, and Wisconsin. The following is a summary of the key provisions of the UCCA as stated by the Uniform Law Commission are as follows:

**Table: Uniform Collateral Consequences Act - Key Provisions**

<b>UNIFORM COLLATERAL CONSEQUENCES ACT</b>	
Collection	All collateral consequences contained in state laws and regulations, and provisions for avoiding or mitigating them, must be collected in a single document. The compilation must include both collateral sanctions (automatic bars) and disqualifications (discretionary penalties). In fulfilling their obligations under the Uniform Act,

	<p>jurisdictions will be assisted by the federally-financed effort to compile collateral consequences for each jurisdiction that was authorized by the Court Security Act of 2007.</p>
Notification	<p>Defendants must be notified about collateral consequences at important points in a criminal case: At or before formal notification of charges, so a defendant can make an informed decision about how to proceed; and at sentencing and when leaving custody, so that a defendant can comport his or her conduct to the law. Given that collateral consequences will have been collected in a single document, it will not be difficult to make this information available.</p> <p>The 2010 Supreme Court decision in <i>Padilla v. Kentucky</i> has significantly raised the profile of the problem of collateral consequences. Section 5 of the Act instructs trial courts to confirm that the defendant has received and understood notice of collateral consequences and has had an opportunity to discuss them with defense counsel.</p> <p>The UCCA facilitates notification of collateral consequences before, during, and after sentencing and aids courts and lawyers in providing the defendant with a constitutionally adequate defense.</p>
Authorization	<p>Collateral sanctions may not be imposed by ordinance, policy or rule, but must be authorized by statute. An ambiguous law will be considered as authorizing only discretionary case-by-case disqualification.</p>
Standards for Disqualification	<p>A decision-maker retains the ability to disqualify a person based on a criminal conviction, but only if it is determined, based on an individual assessment, that the essential elements of the person's crime, or the particular facts and circumstances involved, are substantially related to the benefit or opportunity at issue.</p>
Overtured and Pardoned Convictions; Relief Granted by Other Jurisdictions	<p>Convictions that have been overturned or pardoned, including convictions from other jurisdictions, may not be the basis for imposing collateral consequences. Charges dismissed pursuant to deferred prosecution or diversion programs will not be considered a conviction for purposes of imposing collateral consequences. The Act gives jurisdictions a choice about whether to give effect to other types of relief granted by other jurisdictions based on rehabilitation or good behavior, such as expunction or set-aside.</p>
Relief from Collateral Consequences	<p>The Act creates two different forms of relief, one to be available as early as sentencing to facilitate reentry (Order of Limited Relief) and the other after a period of law-abiding conduct (Certificate of Restoration of Rights).</p> <ul style="list-style-type: none"> <li>• An Order of Limited Relief permits a court or agency to lift the</li> </ul>

	<p>automatic bar of a collateral sanction, leaving a licensing agency or public housing authority, for example, free to consider whether to disqualify a particular individual on the merits.</p> <ul style="list-style-type: none"><li>• A Certificate of Restoration of Rights offers potential public and private employers, landlords and licensing agencies concrete and objective information about an individual under consideration for an opportunity or benefit, and a degree of assurance about that individual's progress toward rehabilitation, and will thereby facilitate the reintegration of individuals whose behavior demonstrates that they are making efforts to conform their conduct to the law.</li></ul>
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## Notes

<sup>1</sup> The incarceration *rate* is the number of people under correctional supervision per 100,000 population. International Centre for Prison Studies, [Entire World – Prison Population Rates per 100,000 of the National Population](#) (last updated 12.31.2010). The United States' incarceration rate is 731 per 100,000 people. The US represents 5% of the world's population, yet incarcerates almost a quarter of the world's prisoners.

<sup>2</sup> [Justice Policy Institute Fact Sheet 2010](#)

<sup>3</sup> [Pew Research Center on the States, Prison Count 2010.](#)

<sup>4</sup> Of Texas' 246 jails, 230 are located in the counties they serve. Seventeen counties do not have a county jail and house their inmates in adjacent county lockups. An additional 16 are private for-profit jail facilities. Texas' 16 for-profit jails also house inmates from other states under contract. [TCJS Strategic Plan 2009-2012](#), page 12.

<sup>5</sup> Sixty-three percent of the 65,000 or more individuals confined in the Texas county jails have not been convicted, merely detained, sometimes for years. Every day, an average of 41,000 individuals are held in county jails who have not been convicted of a crime and are not serving a sentence. [CJS Strategic Plan 2009-2012.](#)

<sup>6</sup> In 2010, the Texas Department of Criminal Justice (TDCJ) spent \$2.5 billion to house 154,576 Texas inmates, at an average cost of \$16,173.00 per inmate that year. When expenses outside the corrections budget that support the prison system is factored in (such as employee benefits, pension contributions and capital costs) the actual cost was an estimated \$21,390.00 per inmate per year. [Vera Institute of Justice, Texas Fact Sheet January 2012.](#)

<sup>7</sup> The 2012 poverty threshold for a single person in 2012 is \$11,170. 2012 Health and Human Services Commission Poverty Guidelines, <http://aspe.hhs.gov/poverty/12poverty.shtml>

<sup>8</sup> See [Pew Center on the States, State of Recidivism: The Revolving Door of America's Prisons](#), (Washington, DC: The Pew Charitable Trusts, April 2011).

<sup>9</sup> [Pew Research Center on the States, Prison Count 2010.](#)

<sup>10</sup> HB 1205 entitles defendants to time credits toward the completion of their community supervision if certain conditions are met. Time credits can be awarded for participation in programs such as earning a high school diploma or equivalent, payment of fines and fees, and successful completion of anger management programs.

<sup>11</sup> Pew Center on the States, [Smaller Prison Count Breaks 30 Year Trend](#), March 17, 2010. 1972 was the first year this data was collected. Between 2009 and 2010, state and federal prison populations declined by 0.6%. Bureau of Justice Statistics, [Correctional Populations of the United States 2010.](#)

<sup>12</sup> Texas' incarceration rate declined from 683 per 100,000 in 2006 to 648 in 2010. [Prisoners Series, National Prison Statistics.](#) 1997-2010 collections, Bureau of Justice Statistics.

<sup>13</sup> One such initiative is the proposed Uniform Collateral Consequences Act (UCCA), approved by American Bar Association in 2010. At this writing, the Act has been adopted by North Carolina, and is under legislative consideration in Minnesota, New York, Vermont, West Virginia, and Wisconsin. Key provisions include a collection of collateral consequences for each state compiled in a single document to include both collateral sanctions (automatic bars) and disqualifications (discretionary penalties); notice provisions to Defendants of these consequences at important points in a criminal case and at sentencing; uniform court orders to lift automatic bars, and a certificate of restoration of rights for an individual under consideration for an opportunity or benefit. [Uniform Law Commission, Collateral Consequences of Conviction Act.](#)

<sup>14</sup> It excludes consequences of conviction as it relates to immigration status.

<sup>15</sup> The change of name can be a stand-alone order, or incorporated into another order, such as a divorce decree.

<sup>16</sup> Title 37, Tex. Admin. Code 145.27.

<sup>17</sup> Tex. Gov't Code § 510.0165; Tex. Trans. Code (f)(1)

<sup>18</sup> If the documents are not provided to the offender at release or at their first parole visit, they should contact RID by calling them toll free at 1-877-887-6151 or by mail to Reentry and Integration Division 8712 Shoal Creek Blvd. Ste. 280 Austin, Texas 78757.

<sup>19</sup> From [www.txdps.state.tx.us/DriverLicense/ApplyforLicense.htm](http://www.txdps.state.tx.us/DriverLicense/ApplyforLicense.htm)

<sup>20</sup> Eighty-one (81) of Texas' 254 counties do not have a DPS office. US Dept. of Justice [letter to Texas Election Commission](#), March 12,2012

<sup>21</sup> Only 49 of Texas' 221 driver's license offices across the state have extended hours. *Id.*

<sup>22</sup> Title 37, Tex. Admin. Code 145.27.

<sup>23</sup> From <http://www.txdps.state.tx.us/DriverLicense/domicileReq.htm>

<sup>24</sup> 49 CFR 383.

<sup>25</sup> For the complete listing, visit the DPS website at <http://www.txdps.state.tx.us/DriverLicense/dlfees.htm>

<sup>26</sup> If an act or condition applies, the applicant may submit an explanatory statement with the application.

<sup>27</sup> 22 USC 2714(a)(1), (b)(1) (2000).

<sup>28</sup> 22 USC 2714 (b) (2) (2000).

<sup>29</sup> CFR Title 22, Part 51.60

<sup>30</sup> The decision of whether to granting a name change for a person with a final felony conviction is within the court's discretion.

"(a)[I]f the change is in the interest or to the benefit of the petitioner and in the interest of the public.

(b)A court may order a change of name under this subchapter for a person with a final felony conviction if, in addition to the requirements of Subsection (a), the person has:

(1)received a certificate of discharge by the Texas Department of Criminal Justice or completed a period of community supervision or juvenile probation ordered by a court and not less than two years have passed from the date of the receipt of discharge or completion of community supervision or juvenile probation; or

(2)been pardoned.

(c)A court may order a change of name under this subchapter for a person subject to the registration requirements of Chapter 62, Code of Criminal Procedure, if, in addition to the requirements of Subsection (a), the person provides the court with proof that the person has notified the appropriate local law enforcement authority of the proposed name change. In this subsection, "local law enforcement authority" has the meaning assigned by Article 62.001, Code of Criminal Procedure. . Tex. Fam. Code §45.103

<sup>31</sup> Ch. 37, Tex. Civ. Prac. & Rem. Code

<sup>32</sup> Tex. Civ. Prac. & Rem. Code § 37.002(a)

<sup>33</sup> Other legal forms are available from county law libraries throughout Texas. For a list of Texas Law Libraries, click [here](#).

<sup>34</sup> For more information about how to obtain criminal records, visit the DPS website, or call, write, or email: Texas Department of Public Safety Crime Records Service CJIS Field Representatives P.O. Box 4143 Austin, Texas 78765 Phone: (512) 424-2478 Email: [afis\\_cjis@dps.texas.gov](mailto:afis_cjis@dps.texas.gov)

<sup>35</sup> National Crime Information Center (NCIC) Criminal Justice Information Services (CJIS) Division  
1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Telephone: (304) 625-2000; Hours of Service: 9:00 a.m.  
- 5:00 p.m.

<sup>36</sup> [Tex. Gov't Code §§411.082](#)(2); 411.082(3); 411.083(b).

<sup>37</sup> For example, Public Data ([www.publicdata.com](http://www.publicdata.com)) currently offers the following “lookup” categories: Criminal -  
Federal, State and Area, Most Wanted, Sex Offenders, Terrorists, Department of Motor Vehicles, Professional  
License, Property Tax, Driver’s License, Secretary of State (business filings) and Civil Court Records.

<sup>38</sup> The Gramm-Leach-Bliley Act of 1999.

<sup>39</sup> [Tex. Gov't Code § 411.0851](#). Duty of Private Entity to Update Criminal History Record Information; Civil Liability

<sup>40</sup> [Tex. Gov't Code §411.0835](#), Prohibition against Dissemination to Certain Private Entities

<sup>41</sup> [Tex. Gov't Code §552.1425](#).

<sup>42</sup> Tex. Code Crim. P. Art. 102.012 and Tex. Gov't Code §76.011.

<sup>43</sup> Tex. Code Crim. P. §55.01(2) (B).

<sup>44</sup> [Travis County Felony Pretrial Diversion Program](#)

<sup>45</sup> Tex. Fam. Code § 53.03.

<sup>46</sup> Tex. Fam. Code §86.001(b)

<sup>47</sup> [Texas Admin. Code Title 37, Rule 27.72](#), “Reporting of Information Related to the Protective Order File.”

<sup>48</sup> “A prosecuting attorney's decision to file an application for a protective order under Chapter 71, Family Code,  
should be made without regard to whether a criminal complaint has been filed by the applicant. [Tex. Code Crim. P.  
Art. 5.061\(b\)](#), Family Violence Prevention.

<sup>49</sup> Tex. Fam. Code § 85.025(c)

<sup>50</sup> Tex. Fam. Code 85.025

<sup>51</sup> Tex. Code Crim. P. Art. 17.292

<sup>52</sup> [Tex. Code Crim. P. Ch.7A](#)

<sup>53</sup> The explanatory paragraphs regarding expunction and nondisclosure of deferred adjudications is adapted in part  
from a brief article appearing in the Texas Young Lawyer’s Association news posting June 29, 2007: Expunction vs.  
Deferred Adjudication Nondisclosure, by Heath Poole, Hoelscher, Lipsey, Elmore & Benn, P.C. in College Station,  
Texas ; used with permission.

<sup>54</sup> Ch. 55, Tex. Code Crim. P.

<sup>55</sup> Ch. 481, Tex. Gov't Code

<sup>56</sup> Tex. Gov't. Code 411.081

<sup>57</sup> Tex. Code Crim. P. Art. 55.01(a)(1)(B) and (c). Juvenile records may be sealed unless there are pending criminal  
proceedings or the offender has been adjudicated a habitual felon. Tex. Fam. Code §58.003. If sealed, the ex-  
offender may deny the existence of the record. Tex. Fam. Code §58.003.

<sup>58</sup> The “actual innocence” provision, added by the Legislature in 2011, was intended to apply to those wrongfully  
convicted and exonerated. Prior to this language they had to obtain a pardon and then get an expunction to have the  
wrongful conviction removed from their record.



<sup>59</sup> Tex. Code Crim. P Art. 55.01(2)(B).

<sup>60</sup> See *Ex parte Hernandez*, 165 SW3d 760, 763 (Tex. App.-Eastland, 2005)

<sup>61</sup> Tex. Code Crim. P. Art. 55.01(2)(B).

<sup>62</sup> Tex. Code Crim. App. Art. 55.03(a) and (b)

<sup>63</sup> Tex. Code Crim. Proc. Ann. Art. 55.01(a)(1)(B).

<sup>64</sup> *Perdue v. Texas Dept. of Public Safety*, 32 SW3d 333, 334-35 (Tex. App. 2000).

<sup>65</sup> Tex. Code Crim. P Art. 55.03(a),(b)(c), "When questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, [the person] may state only that the matter in question has been expunged."

<sup>66</sup> Tex. Gov't Code §411.081(e)(1)-(4)

<sup>67</sup> Tex. Gov't Code §411.081(i)

<sup>68</sup> Tex. Gov't Code §411.081; Tex. Code Crim. P. Art. 42.12 §. 5(c).

<sup>69</sup> Tex. Gov't Code §411.081(d)

<sup>70</sup> Tex. Gov't Code §411.081; Tex. Code Crim. P. Art. 42.12 sec. 5(c).

<sup>71</sup> Tex. Gov't Code §411.081

<sup>72</sup> Tex. Gov't Code §411.081.

<sup>73</sup> Tex. Gov't Code §411.081(d).

<sup>74</sup> Tex. Gov't. Code §411.081(d); Op.Atty.Gen.2004, No. GA-0255.

<sup>75</sup> Tex. Gov't Code Ann. § 411.085

<sup>76</sup> The official [Texas Board of Pardons and Paroles](#) application form for pardon and pardon checklist may be downloaded from their website.

<sup>77</sup> 99 Pew Center on the States, *One in 100: Behind Bars in America 2008*. (Feb.2008). See also, Devah Pager and Bruce Western, *Race at Work: Realities of Race and Criminal Record in the NYC Job Market* (Princeton University, 2005). as cited in the Excluded Workers Congress 2010 publication Unity for Dignity: Expanding the Right to Organize to Win Human Rights at Work, December 2010

<sup>78</sup> Civil Rights subsection adapted from Unity for Dignity: Expanding the Right to Organize to Win Human Rights at Work, December 2010 (used with permission from the Excluded Workers Congress, [wee.ewc.org](#)).

<sup>79</sup> New York, Connecticut, Minnesota, Hawaii, Illinois, Massachusetts, Pennsylvania, and Wisconsin have laws that protect convicted criminals from discrimination on the basis of their conviction.

<sup>80</sup> U.S. Equal Employment Opportunity Commission, *EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended*, 42 U.S.C. § 2000e et seq., 1982, Feb 4, 1987, <http://www.eeoc.gov/policy/docs/convict1.html>, as cited in the Excluded Workers Congress 2010 publication Unity for Dignity: Expanding the Right to Organize to Win Human Rights at Work, December 2010

<sup>81</sup> Harry Holzer, Steven Raphael & Michael Stoll, *Perceived Criminality, Criminal Background Checks and the Racial Hiring Practices of Employers*, University of Chicago Journal of Law and Economics, 2006. as cited in the Excluded Workers Congress 2010 publication Unity for Dignity: Expanding the Right to Organize to Win Human Rights at Work, December 2010

<sup>82</sup> Devah Pager, *The Mark of a Criminal Record*, 108 AmJ Soc. 937 (2003), as cited in the Excluded Workers Congress 2010 publication *Unity for Dignity: Expanding the Right to Organize to Win Human Rights at Work*, December 2010

<sup>83</sup> Title VII of the Civil Rights Act of 1964, 42 USC §2000e *et seq.*

<sup>84</sup> Jamie Watson, et.al., [A Portrait of Prisoner Reentry in Texas](#) 15 (2004); Equal Employment Opportunity Commission, Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended, 42 USC §2000e *et seq.* (1982) ("Where there is evidence of an adverse impact on blacks or Hispanics, an absolute bar to employment based on the mere fact that an individual has a conviction record is unlawful."),

<sup>85</sup> As amended, 42 U.S.C. § 2000e

<sup>86</sup> See [http://www.eeoc.gov/laws/guidance/qa\\_arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm)

<sup>87</sup> Occupational Outlook Handbook, occupationaloutlookhandbook.txt <http://www.bls.gov/ooh/> U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS) – Occupational Outlook Handbook, 2010-2011 Edition

<sup>88</sup> For a list of state's laws on e-verify, see the National Council of State Legislatures, information page on e-Verify, last updated September 2011. <http://www.ncsl.org/issues-research/immig/e-verify-faq.aspx#10>

<sup>89</sup> Adapted from an article appearing in [The Work Buzz](#), "[How to Conduct a Job Search With a Criminal Record](#)", Auerbach, Debra, April 27, 2012, used with permission.

<sup>90</sup> See *Ludwig v. State*, 969 SW2d 22, 28 (Tex. App. – Forth Worth 1998, pet. ref'd).

<sup>91</sup> This chart is adapted from one created by attorney Randy Leavitt, used here with permission. We gratefully acknowledge his contribution.

<sup>92</sup> Texas Dept. of Public Safety, Public Sex Offender Registry Download - [Sex offender registrants: Internet access, Online Identifiers, and Social Networking Sites](#)

<sup>93</sup> 42 U.S.C. Section 16911 *et seq.*

<sup>94</sup> The Department, "shall determine the minimum required registration period under federal law for each reportable conviction or adjudication"..."for a period that exceeds the minimum required registration period under federal law." Tex. Code Crim.P. Art. 62.402

<sup>95</sup> "Pursuant to Texas Code of Criminal Procedure Art. 62.301 and judicial orders, not all offenders are available on the public access sex offender database. Anyone who uses any information on this website to injure, harass, or for any other unlawful purpose may be subject to criminal prosecution or civil liability. [https://records.txdps.state.tx.us/DPS\\_WEB/SorNew/index.aspx](https://records.txdps.state.tx.us/DPS_WEB/SorNew/index.aspx)"

<sup>96</sup> 29 USC § 206(a)(1)(C).

<sup>97</sup> 29 USC § 206(a)(2)(C).

<sup>98</sup> A state minimum wage can exceed the current federal rate of \$7.25 per hour. Workers in Washington State are paid a minimum of \$8.67 per hour, (the highest in the nation). Federal law supersedes states like Georgia, with a minimum wage of \$5.15 per hour but workers must be paid the federal minimum of \$7.25.

Local governments may set their own wage rate above the state or federal minimum through a local living wage or minimum wage ordinance. California's minimum wage is \$8.00 per hour, but workers in San Francisco benefit from a living wage ordinance that mandates a minimum \$9.79 per hour.

<sup>99</sup> Tex. Labor Code § 62.051 "[A]n employer shall pay to each employee the federal minimum wage under Section 6, Fair Labor Standards Act of 1938 (29 USC Section 206)." Texas is among the twenty-four states whose minimum

wage coincides with the federal minimum. A breakdown by state may be found at the Department of Labor's website, [www.dol.gov/whd/minwage/america](http://www.dol.gov/whd/minwage/america).

<sup>100</sup> Tex. Labor Code § 62.053.

<sup>101</sup> Tex. Labor Code § 61.001(b), (c).

<sup>102</sup> Tex. Labor Code § 61.012.

<sup>103</sup> 29 CFR § 778.106.

<sup>104</sup> *Id.*

<sup>105</sup> Tex. Labor Code § 61.016.

<sup>106</sup> Tex. Labor Code §§ 61.018, 61.016.

<sup>107</sup> Tex. Labor Code § 62.053.

<sup>108</sup> Tex. Admin. Code § 821.27.

<sup>109</sup> 29 CFR § 531.30.

<sup>110</sup> 29 CFR § 531.3(d).

<sup>111</sup> 29 CFR § 531.31.

<sup>112</sup> 29 CFR § 531.37(a)

<sup>113</sup> [Tex. Admin Code § 821.28](#).

<sup>114</sup> 29 CFR § 531.3(d). More information on legal and illegal deductions may be found on the Texas Workforce Commission website at [www.twc.state.tx.us/news/eftededuction\\_problems\\_under\\_tpl](http://www.twc.state.tx.us/news/eftededuction_problems_under_tpl).

<sup>115</sup> 29 CFR § 531.3(d)(1-2).

<sup>116</sup> [29 CFR §§ 778.304, 778.306, 778.307](#).

<sup>117</sup> See Re-Entry Mythbusters, a project of the [Federal Interagency Reentry Council](#).

<sup>118</sup> Information for employers wishing to participate in the Federal Bonding Program should contact the Texas Workforce Commission, Fidelity Bonding Services, at [www.twc.state.tx.us/svcs/rio/fidelitybonding.html](http://www.twc.state.tx.us/svcs/rio/fidelitybonding.html).

<sup>119</sup> A publication of [Legal Assistance to Microenterprises Program](#), [Texas C-BAR](#), and [Texas RioGrande Legal Aid](#)

<sup>120</sup> For a short summary of how a child care co-op is organized, go to <http://www.extension.iastate.edu/publications/pm1808.pdf>, a publication of Iowa State University.

<sup>121</sup> Adapted from [Job Hunting/Job Scams](#) from the Money Matters section of the FTC's website.

<sup>122</sup> This section adapted from National Employment Law Project, [www.NELP.org](http://www.nelp.org) fact sheet for organizers, 2002: Day Laborers' Rights under Federal Law: Waiting Time and Deductions from Wages. [http://nelp.3cdn.net/c348fa1fdf4b2bca59\\_2im6b5yha.pdf](http://nelp.3cdn.net/c348fa1fdf4b2bca59_2im6b5yha.pdf)

<sup>123</sup> "The only national survey of day laborers ever performed in the United States was released in 2006. These statistics come from that survey. Abel Valenzuela, Nik Theodore, Edwin Melendez & Ana Luz Gonzalez, On the Corner: Day Labor in the United States, Jan 2006, <<http://www.sscnet>.

[ucla.edu/issr/csup/uploaded\\_files/Natl\\_DayLabor-On\\_the\\_Corner1.pdf](http://ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf)>" as cited in a 2010 publication by the Excluded Worker's Congress, <http://www.excludedworkerscongress.org/day-laborers>

<sup>124</sup> State and local laws can provide more rights for day laborers. For more information, see Drafting Day Labor Legislation: A Guide for Organizers and Advocates. <http://www.nelp.org/pub39.pdf>.

<sup>125</sup> SocialIntel is subject to the federal Fair Credit Reporting Act, but as a result, it can keep an archive of a person's social-media activities for seven years. The information stored is to be used only for background checks but can be captured even if the information has been deleted from the account by the user.

<sup>126</sup> The Stored Communications Act (SCA), or the Computer Fraud and Abuse Act (CFAA). Those two acts, respectively, prohibit intentional access to electronic information without authorization, and prohibit intentional access to a computer, without authorization, to obtain information.

<sup>127</sup> [Federal Trade Commission Work at Home Schemes](#)

<sup>128</sup> As distinguished from an "occupational" license, this is a type of restricted driver's license allowing for limited driving privileges during a period of driver's license suspension.

<sup>129</sup> Some of the material in this section is adapted from the guide, "Occupational Licenses in Texas" prepared by the Texas Young Lawyers Association and available under "publications" at [www.texasbar.com](http://www.texasbar.com).

<sup>130</sup> ["Working with Conviction - Criminal Offenses as Barriers to Entering Licensed Occupations in Texas"](#) (citing Texas Department of Licensing and Regulation). In 2006, TDLR opposed the application for a master electrician's license submitted by a man convicted of four counts of felony indecency with a child. After considering the applicant's good conduct in the years since his offense, and the fact that licensure posed little danger of future criminal activity involving the public or the applicant's customers, an administrative law judge ruled in favor of licensure. [Texas Department of Licensing and Regulation v. Clark](#), SOAH Docket No. 452-05-6493.ELC, 2006 WL 4488807 (Mar. 24, 2006).

<sup>131</sup> <http://www.texaspolicy.com/pdf/2007-11-PP28-licensing-ml.pdf>. For a complete list of occupations with license restrictions on ex-offenders, see [Statutory Restrictions on Employment of Convicted Felons in Texas](#).

<sup>132</sup> Tex. Occ. Code §53.021.

<sup>133</sup> Tex. Occ. Code §53.021(b).

<sup>134</sup> Since requirements differ by occupation, a potential licensee should contact the [TDLR](#) at to verify the requirements for a particular license.

<sup>135</sup> For more information, go to TDLJ's Criminal History Evaluation Letter page, See [Section 51.4012](#) and [Chapter 53, Subchapter D, of the Occupations Code](#), permit individuals to request a criminal history evaluation letter from the Department before formally applying for a license.

<sup>136</sup> Chapters 51 and 53, Tex. Occ. Code

<sup>137</sup> Tex. Occ. Code §53.021(a).

<sup>138</sup> [Tex. Code Crim. P. § 62.001\(6\)](#). "Sexually violent offense" is defined to include the following offenses under the Texas Penal Code: §21.02 (Continuous sexual abuse of young child or children), §21.11(a)(1) (Indecency with a child), §22.011 (Sexual assault), or §22.021 (Aggravated sexual assault), §43.25 (Sexual performance by a child), §20.04(a)(4)(Aggravated kidnapping, if the defendant committed the offense with intent to violate or abuse the victim sexually; §30.02 (Burglary, if with intent to commit certain crimes involving children).

<sup>139</sup> "The [SOAH] shall conduct all hearings in contested cases under Chapter 2001 that are before the Texas Department of Licensing and Regulation under Chapter 51, Occupations Code." §2003.021(g).

<sup>140</sup> "The occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with this chapter." Tex. Gov't. Code §2001.057(f)(5).

<sup>141</sup> Tex. Penal Code §521.457

<sup>142</sup> Adapted in part from "Collateral Consequences of Criminal Convictions", Leavitt, Randy T., for the 35th Annual Advanced Criminal Law Course, July 20-23, 2009, in Dallas, Texas.

<sup>143</sup> [“A Framework to Improve How Fines, Fees Restitution and Child Support are Assessed and Collected from People Convicted of Crimes”](#), Texas Office of Court Administration, 2009.

<sup>144</sup> *Id.*

<sup>145</sup> See “Court Costs Go to Other Uses”, an investigative report by Eric Dexheimer in the Austin American Statesman, Austin Texas, March 4, 2012.

<sup>146</sup> See AG Opinion DM-407 (1996).

<sup>147</sup> [“A Framework to Improve How Fines, Fees Restitution and Child Support are Assessed and Collected from People Convicted of Crimes”](#), Texas Office of Court Administration, 2009.

<sup>148</sup> Tex. Fam. Code §8.106 and §158.009

<sup>149</sup> Bronner, Ethan, [“Poor Land in Jail as Companies Add Huge Fees for Probation”](#), New York Times, 7.3.2012

<sup>150</sup> See Denial of Federal Benefits Program, § 5301 of the Anti-Drug Abuse Act of 1988 (P.L. 100-690); <http://www.ojp.usdoj.gov/BJA/grant/dfb.html>.

<sup>151</sup> [HHSC TANF \(www.hhsc.state.tx.us/Help/Financial/temporary-assistance.shtml#TANFpayment\)](http://www.hhsc.state.tx.us/Help/Financial/temporary-assistance.shtml#TANFpayment). Follow link to [Apply for TANF](#)

<sup>152</sup> Employment assistance provided by the [Texas Workforce Commission](#).

<sup>153</sup> For more information or to apply for benefits, contact the [Social Security Administration's SSI](#) page or call 2-1-1 for information on where to apply in person.

<sup>154</sup> Texas Workforce Commission, Unemployment Insurance Benefits Handbook at 8, *available at* <http://www.twc.state.tx.us/ui/bnfts/bi-99.pdf>.

<sup>155</sup> More information about qualifying for unemployment is available from the Texas Workforce Commission's [Unemployment Insurance Benefits Handbook](#).

<sup>156</sup> The Texas Department of Criminal Justice's (TDCJ) Re-Entry and Integration Division (RID) addresses housing issues as part of its voluntary re-entry plan.

<sup>157</sup> For a comprehensive list of Texas housing resources for formerly incarcerated people, please refer to the Texas Criminal Justice Coalition's free publication, [A New Start – A Re-Entry Guide for Texas](#).

<sup>158</sup> Tex. Govt. Code §508.181(a).

<sup>159</sup> Tex. Govt. Code §508.181(b).

<sup>160</sup> Special rules apply to sex offenders. §508.181(g). By law, there is a limit to the number of sex offenders that can be released to the county of conviction or residence. When this number (based on a percentage of the total number of sex offenders released to supervision) is exceeded, they must be released to a different county.

<sup>161</sup> Currently, there are only six TDCJ-approved halfway houses in Texas, located in the major population centers of Beaumont, Ft. Worth, Austin, Dallas, El Paso and Houston. [TDCJ- Parole Division, Halfway House Directory](#) (last reviewed November 21, 2011). Five of the six are managed by private for-profit companies under contract with TDCJ. The [GEO Group](#), a multinational corporation headquartered in Boca Raton, Florida, manages the TDCJ halfway houses in Beaumont, Ft. Worth and Houston. [Avalon Correctional Services, Inc.](#), headquartered in Oklahoma City, Oklahoma, manages houses in Austin and El Paso. The sixth, Wayback House in Dallas, is operated by a nonprofit. Only three of the six halfway houses – in Beaumont, El Paso and Houston – accept sex offenders and parolees from other counties.

<sup>162</sup> Tex. Gov. Code §508.157.

<sup>163</sup> There are 424 PHA's in the state of Texas that collectively manage over 66,000 public housing units. The San Antonio Housing Authority is the largest with 6,611 units, followed by El Paso (6,028), Dallas (4,667) and Houston (3,485). A full list of the PHA's in Texas and their contact information is available on the [HUD website](#).

<sup>164</sup> The Housing Opportunity Program Extension Act of 1996, codified at 42 USCA §§1437d(s);1437d(t)

<sup>165</sup> Tran-Leung, Marie Claire, [When Discretion Means Denial for People With Criminal Records in Federally Subsidized Housing](#), Shriver Center 2011

<sup>166</sup> See, e.g., FY 2008 Administrative Plan, Housing Authority of the City of Arlington at 186, available at, [http://www.arlingtontx.gov/housing/pdf/AHA\\_Admin%20%20Plan%20FY2009%20REV%201-15-09.pdf](http://www.arlingtontx.gov/housing/pdf/AHA_Admin%20%20Plan%20FY2009%20REV%201-15-09.pdf).

<sup>167</sup> HUD Notice H 2002-22, at 5.

<sup>168</sup> 42 USC 1437d(1)(6).

<sup>169</sup> 24 CFR §5.903(f)

<sup>170</sup> 24 CFR § 982.554.

<sup>171</sup> At minimum, the review procedure must comply with the following:

- The review may be conducted by anyone designated by the PHA except the person that made the decision to deny housing assistance.
- The applicant must be given an opportunity to present written or oral objections to the PHA decision.
- The PHA must notify the applicant of the PHA final decision after the informal review, including a brief statement of the reasons for the final decision.

<sup>172</sup> 24 CFR §960.203(d)

<sup>173</sup> 24 CFR §982.552(c)(2)(l)

<sup>174</sup> Act CFR Tit. 24, Subt. A, Pt. 5, Subpt. L.

<sup>175</sup> The source of legal protection is the federal Fair Housing Act. Title VIII of the Civil Rights Act of 1968, as amended in 1988 (42 USC §3601 et seq.), also known as the Fair Housing Act, and the Civil Rights Act of 1866 (Title 42 of the United States Code sections 1981 and 1982) both prohibit discrimination in a wide array of real estate practices, including housing sale and rental, provision of homeowner's insurance and mortgage lending.

<sup>176</sup> For more information, see The Legal Action Center publication ["Making a Claim of Racial Discrimination Under the Federal Fair Housing Act"](#).

<sup>177</sup> 42 USC §3604(a) Refusals to sell or rent:

"To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of.." membership in a protected class.

<sup>178</sup> A "handicap" or disability is a physical or mental impairment, or a record of having an impairment, which substantially limits a person's major life activities.

<sup>179</sup> Sexual harassment includes verbal comments, gestures, or physical contact that creates an offensive environment.

<sup>180</sup> 42 USC §3604(b) Discrimination in terms, conditions or privileges of rental or sale:

"To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of.." membership in a protected class.

<sup>181</sup> Under federal fair housing laws, "family status" includes families of one adult parent or guardian, and at least one child under 18. A pregnant woman is also defined as "family."

<sup>182</sup> 42 USC §3604(d) Denying availability:

"To represent to any person because of..." membership in a protected class "...that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."

<sup>183</sup> See 15 USC §1681 *et seq.*

<sup>184</sup> 15 USC §1681c(a)(2)

<sup>185</sup> 15 USC § 1681e(b).

<sup>186</sup> *Philbin v. Trans Union Corp.*, 101 F.3d 957, 963 (3rd Cir. 1996).

<sup>187</sup> § 1681i(a)(1).

<sup>188</sup> §1681s(a)-(b).

<sup>189</sup> §1681s(a)(2)

<sup>190</sup> Tex. Fam. Code 105.006. As a practical matter, few comply with the requirement to update this information, but it must be included in the order unless there is a compelling reason (e.g., family violence) to exclude it.

<sup>191</sup> *Holly v. Adams*, 544 Sewed 367 (Tex. 1976).

<sup>192</sup> Tex. Fam. Code §102.003

<sup>193</sup> 40 Texas Admin. Code. §700.203. DFPS must comply with all statutes and rules pertaining to confidentiality of CPS records. 40 Texas Adm. Code § 700.201- 700.207.

<sup>194</sup> Tex. Gov't. Code §501.014

<sup>195</sup> Uniform Interstate Family Support Act (UIFSA), codified under Tex. Fam. Code Ch. 159.

<sup>196</sup> Texas Penal Code §25.05

<sup>197</sup> Tex. Fam. Code §154.062

<sup>198</sup> Tax tables with gross and corresponding net income after standard deductions are available on the Texas Attorney General's office, [www.oag.state.tx.us/cs/attorneys](http://www.oag.state.tx.us/cs/attorneys).

<sup>199</sup> In this scenario, based on a net income of \$2000 a month, application of the multiple family guidelines would reduce his monthly support obligation by \$50 monthly (from \$400 at 20% to \$350 at 17.5%).

<sup>200</sup> Tex. Fam. Code §8.106 and §158.009

<sup>201</sup> Tex. Fam. Code §153.131(f). The court retains jurisdiction to render an order for retroactive child support in a suit if a petition requesting retroactive child support is filed not later than the fourth anniversary of the date of the child's 18th birthday.

<sup>202</sup> Tex. Fam. Code §154.187

<sup>203</sup> In 2007, Texas ranked 50th in the nation, with only 46.7 percent of Texans having employment-based health insurance coverage. Source: [Texas Medical Association](http://www.texasmedicalassociation.org).

<sup>204</sup> Medicaid is a federal-state matching program established by Congress under Title XIX of the Social Security Act (SSA) of 1965 and administered by the Centers for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS).

<sup>205</sup> Tex. Fam. Code §154.127.

<sup>206</sup> Tex. Fam. Code §154.009.

<sup>207</sup> Tex. Fam. Code §154.131(b)

<sup>208</sup> Tex. Fam. Code §154.069.

<sup>209</sup> Tex. Fam. Code §154.068

<sup>210</sup> Tex. Fam. Code §§157.001; 157.002.

<sup>211</sup> Tex. Fam. Code §154.066. For example, if the NCP used to earn \$21 an hour as an electrician, but intentionally accepted a lower-paying job to avoid a higher support obligation, the court is authorized to set support based on the higher wage of \$21 an hour.

<sup>212</sup> For example, if a self-employed father made \$60,000.00 for the two years preceding the divorce and \$22,000.00 in the year of divorce, support can be based on his average income for those 3 years (average of \$47,333.00 or \$3,944.00 monthly).

<sup>213</sup> For purposes of this section, the person ordered to pay support is referred to as the “NCP” (Noncustodial Parent) while the person to whom support is paid is the “CP” (Custodial Parent).

<sup>214</sup> Tex. Fam. Code §156.401 *et seq.*

<sup>215</sup> Tex. Fam. Code §231.104

<sup>216</sup> Noncustodial Parent

<sup>217</sup> Tex. Fam. Code §157.008 (c)

<sup>218</sup> Tex. Penal Code §25.05. See the OAG’s [“Criminal Nonsupport Handbook”](#) for prosecutors.

<sup>219</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub.L.No. 103-322, 20411, 108 Stat. 1796 (1994).

<sup>220</sup> Drug Free Student Loans Act of 1998, 20 USC 1091(r), 2002.

<sup>221</sup> 20 USC §1091(r)(2)(B).

<sup>222</sup> Tex. Educ. Code §54.633.

<sup>223</sup> See, *Institutional Rules on Student Services and Activities*, Chapter II, Student Discipline and Conduct, University of Texas (2008-09)

<sup>224</sup> Earlier studies reached similar conclusions. See [“Piling it On: The Growth of Proprietary School Loans And the Consequences for Students”](#) National Consumer Law Center January 2011

<sup>225</sup> From the Selective Service website, [www.sss.gov/Status.html](http://www.sss.gov/Status.html)

<sup>226</sup> [Prisoners of the Census](#): The census counts incarcerated people as “residents” of the prison location, despite the fact that they cannot vote while serving time and often know nothing about the surrounding community. Some argue that this distorts the population-based voting districts by giving voters who live in a community with a correctional facility more influence in government than other citizens. The Texas Election Code specifically excludes prisons from the definition of a “residence” Tex. Election Code §1.015(e)

<sup>227</sup> The United States District Court for the District of Columbia, Pursuant to section 5 of the Voting Rights Act of 1965, Texas was required to show that Senate Bill 14 (SB 14) “neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race[,] color,” or “member[ship] [in] a language minority group.” 42 U.S.C. §§ 1973c(a), 1973b(f)(2). [State of Texas v. Holder, US Dist. Court - DC Cir., civil action no. 12-cv-128, August 30, 2012.](#)

<sup>228</sup> Tex Elec. Code §11.002.

<sup>229</sup> Tex. Elec. Code §§11.002; 13.001



<sup>230</sup> Tex. Gov't Code §§62.102(7),(8); Tex. Code Crim. P. art. 19.08(4).

<sup>231</sup> Tex. Code Crim. P. Art. 35.16(a)(2).

<sup>232</sup> American Bar Association approval letter, <http://www.uniformlaws.org/Shared/Docs/ABA%20Approval%205-11-2010.pdf>

**APPENDIX A:  
STEPS TO OBTAIN TEXAS DRIVER'S LICENSE OR TEXAS IDENTITY CARD<sup>1</sup>**

Start here. Check each as it applies and it will lead you to the next step(s).

- I am a US Citizen. → go to STEP 1
- I am a Non-Citizen. DPS has special application requirements for non-citizens. They are in the DPS Temporary Visitor Issuance Guide (PDF), available at any Texas driver license office, or from the DPS website.<sup>2</sup>

**STEP 1: CHECK STATUS OF DRIVER'S LICENSE OR ID**

- I have an UNEXPIRED Texas DL or ID:
  - \_\_\_\_\_ in my physical possession AND
  - \_\_\_\_\_ it shows my current address and legal name. STOP. *No further action needed.*
  - \_\_\_\_\_ *or*
  - \_\_\_\_\_ It *does not* show my current address or legal name. → Go to STEP 2.
- I have an EXPIRED Texas DL or ID that:
  - \_\_\_\_\_ Expired less than 2 years ago. →Go to STEP \_\_\_\_\_
  - OR
  - \_\_\_\_\_ Expired more than 2 years ago. →Go to STEP \_\_\_\_\_
- I DO NOT HAVE a Texas DL or ID because:
  - \_\_\_\_\_ It lost or missing. -> Go to STEP \_\_\_\_\_
  - OR
  - \_\_\_\_\_ I have never applied for one. → Go to STEP 3.
- OUT OF STATE LICENSE- My driver's license (DL) or identification card (ID) is not from Texas.<sup>3</sup>
- LEAVING TEXAS - I am leaving Texas *within the next 30 days* to reside elsewhere. STOP. *No further action needed.*<sup>4</sup> Apply or renew your DL or ID in the state or country where you plan to live.

**STEP 2: CHANGE OF ADDRESS OR NAME**

- Address: I need to change my address on my DL or ID.<sup>5</sup>
  - \_\_\_\_\_ In writing: Complete and return DPS form DL-64. Form DL-64 can be obtained from any Texas driver's license office, the DPS website,<sup>6</sup> or your local post office.

<sup>1</sup> For information on office locations, fees, and the required identification documents, visit the DPS at [www.txdps.state.tx.us/DriverLicense](http://www.txdps.state.tx.us/DriverLicense).

<sup>2</sup> <http://www.txdps.state.tx.us/DriverLicense/documents/ImmigrationStatusChart.pdf>

<sup>3</sup> "Out of state" also applies to licenses from US territories and Canada.

<sup>4</sup> Each state has different laws for issuing and renewing driver's licenses and identity card. Check with the driver's license agency in the state where you plan to live.

<sup>5</sup> Texas law requires that DPS be notified within 30 days of any change of address.

\_\_\_\_\_ Online:<sup>7</sup> DPS accepts online address changes if the following requirements are met:

- You are a US citizen over 18 years of age, and
- Your license is not currently suspended, and
- You have no outstanding traffic tickets or warrants, and
- DL or ID is current (unexpired) and in your possession, and
- DL or ID is not Class A or B non-commercial or commercial, and
- You can provide the last 4 digits of your social security number, and
- You have use of a valid credit card (MasterCard, Visa, Discover, or American Express).

Name: I need to change my name on my DL or ID.<sup>8</sup>

In person only, at any Texas driver license office:<sup>9</sup>

\_\_\_\_\_ Pay the \$11 fee, and

\_\_\_\_\_ Show proof of name change. DPS will accept the following as proof:

- marriage license,
- divorce decree,
- certified court order granting a change of name or
- amended birth certificate.<sup>10</sup>

### STEP 3: \_\_\_\_\_ APPLY FOR TEXAS DRIVER'S LICENSE OR ID

I need a Texas *identity card* and have *never* applied for one.

\_\_\_\_\_ I do not have a social security number. A social security number is not \_\_\_\_\_ required for an ID card (it is for a driver's license). → Go to STEP 3A

I need a Texas *driver's license* and have *never applied* for one. Proof of a social security number is required for a first-time Texas Driver's license.<sup>11</sup>

\_\_\_ I have a social security *card* in my possession --> Go to STEP 3A

\_\_\_ I have a social security *number but no card*. You must show proof of your SSN before you can get a first-time driver's license. The social security number must be stated on the document.

I have at least one of the documents listed below as proof of my SSN (if yes, go to) → STEP 3A:

- Federal issued Social Security Card. (Metal Social Security cards or types sold at flea markets will NOT be accepted).
- Health Card (if member number represents Social Security Number).
- Pilot's license
- Military identification (Applies to active, reserve and dependent status).
- Peace officer's license - Texas Commission on Law Enforcement Officer Standard and Education.
- DD-214

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<sup>6</sup> <http://www.txdps.state.tx.us/InternetForms/Forms/DL-64.pdf>

<sup>7</sup> An address change can be made online at <http://www.txdps.state.tx.us/DriverLicense/dlform.aspx?action=change>.

<sup>8</sup> Holders of a Texas DL or ID are required to notify DPS within 30 days of any name change.

<sup>9</sup> [http://www.txdps.state.tx.us/administration/driver\\_licensing\\_control/rolodex/search.asp](http://www.txdps.state.tx.us/administration/driver_licensing_control/rolodex/search.asp).

<sup>10</sup> Foreign marriage licenses or divorce decrees are accepted if written in English or accompanied by a certified English translation. Same sex marriage licenses are not accepted for name changes.

<sup>11</sup> Note that DPS *may* request proof of a social security number for license renewals and duplicate licenses at any time, even if they already have an SSN on file.

- Medicare/Medicaid Cards
- Certified college/university transcript (designating number as SSN).
- Veteran's administration card (with social security number preprinted)

STEP 3A: PROOF OF IDENTITY

DPS divides acceptable proof of identity into three groups: Primary, Secondary and Supporting.

**PRIMARY**

Primary documents must have a name, birthdate and *identifiable photo*. Check at least ONE original item from the primary list below you have with you or that you can easily locate.

- I have at least one original (not a copy) of the primary items listed below. STOP. *If you have 1 primary, you do not need other proof.*
  - Texas Driver's License or Texas Identity Card within two years of expiration date.
  - Unexpired passport book or passport card
  - US Citizenship or Naturalization Certificate (N-560, N-561, N-645, N-550, N-55G, N-570 or N-578) with photo
  - Unexpired DHS or USCIS document, which can be any of the following:
    - US Citizen Identification Card (I-179 or I-197)
    - Permanent Resident Card (I-551)
    - Temporary Resident Identification Card (I-688)
    - Employment Authorization Card (I-766)
    - U.S. Travel Document (I-327 or I-571)
    - Advance Parole Document (I-512 or I-512L) (these are immigration documents).
    - I-94 stamped Sec. 208 Asylee or stamped Sec. 207 Refugee, with photo
    - American Indian Card (I-872) or Northern Mariana card (I-873)
    - Transportation Workers Identification Card
    - Foreign Passport or visa (valid or expired) and I-94 with a defined or undefined expiration date (e.g., duration of status)
  - US Military ID – Unexpired, for active duty, reserve, or retired, with photo
- I do NOT have any primary proof of ID → Go to SECONDARY list.

**SECONDARY**

Secondary documents are *recorded government documents*. They must include your full name and date of birth. Check *all original* items from secondary list below that you have with you or that you can easily locate.

- I have at least TWO secondary items from the list below. STOP. *If you have two secondary, you do not need other proof.*
  - Birth Certificate - Original or certified copy of birth certificate issued by the Texas bureau of vital statistics or equivalent agency in any other U.S. state, U.S. territory, the District of Columbia, or a Canadian province. (Note: A hospital birth record is not a birth certificate and cannot be used as proof).
  - Certification of Birth Abroad - This is a birth certificate issued to you by the US Department of State if you are US citizen born abroad (State Department Form FS-240, DS-1350, or FS-545).
  - Court Order for Change of Name - Original or certified copy of court order from any US State or territory, District of Columbia or Canada. It must show the name and date of birth with the official change of name.

- I have only ONE secondary item in the list above. *If you have one secondary, you also need two supporting items.* -> Go to SUPPORTING list.
- I do NOT have any of the secondary items listed above. STOP. *You must have either primary or secondary proof before you can proceed with your DPS application.* Go to BIRTH CERTIFICATES.

### SUPPORTING

Supporting documents are additional proofs of identity that cannot be used as the only kind of proof. You need at least one secondary and two supporting documents (3 pieces of identification). The list below show examples of supporting documents. *Note: A TDJC-ID counts as a supporting document.* Check at least two *original* supporting documents from the list below that you have with you, or that you can easily locate.

- I have TWO OR MORE supporting items listed below, AND ONE secondary item.
  - Texas Inmate ID card issued by TDCJ
  - TDCJ parole or mandatory release certificate
  - Federal inmate identification card
  - Federal parole or release certificate
  - Temporary receipt for Texas DL or ID.
  - Forms W-2 or 1099
  - Expired Texas DL or ID (expired more than two years)
  - Social Security card
  - Voter registration card
  - Professional license issued by Texas state agency
  - Government ID card (issued by government agency)
  - Medicare or Medicaid card
  - Selective Service card
  - Texas vehicle title or current registration
  - Veteran's Administration card
  - Driver's license or identity card from another state or Canada, within two years of expiration date.
  - School records (e.g., report cards, school photo ID cards)
  - Military records (e.g., Form DD-214)
  - Unexpired U.S. military dependent ID card
  - Original or certified copy of marriage license or divorce decree (If foreign, must have certified translation)
  - Pilot's license;
  - valid consular document;
  - Immunization records,
  - Tribal membership card;
  - Certificate of Degree of Indian Blood
  - Unexpired foreign passport
  - Insurance policy (e.g., auto, home, life, continuously valid for the past 2 years)
  - boat registration/title
  - Hospital issued birth record
- I do NOT have two or more supporting items (and one secondary item). STOP. *You must have at least 2 supporting and one secondary item before you can proceed.* → Go to BIRTH CERTIFICATES.

**STEP 4:           LOST OR STOLEN**

- LOST –appear in person at any DPS office and give acceptable:
  - \_\_\_proof of Identity → Go to STEP 3A
  - \_\_\_proof of Lawful Presence. DPS has special application requirements for non-citizens. They are in the DPS Temporary Visitor Issuance Guide (PDF), available at any Texas driver license office, or from the DPS website.<sup>12</sup>
  - \_\_\_proof of Social Security number (for driver's license only) -> Go to STEP 3
- STOLEN
  - \_\_\_ File a police report. Then, appear in person at any driver's license office, and
    - provide a copy of police report, and
    - evidence that the DL or ID number is being used fraudulently (identity theft)

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<sup>12</sup> <http://www.txdps.state.tx.us/DriverLicense/documents/ImmigrationStatusChart.pdf>

## APPENDIX B: STEPS TO OBTAIN CERTIFIED COPY OF TEXAS BIRTH CERTIFICATE<sup>13</sup>

A certified copy of birth certificate is secondary proof of identity for purposes of getting a Texas Driver's license, ID card, or CDL through the Texas Department of Public Safety.<sup>14</sup>

### STEP 1 - BIRTH STATUS

- I was born in Texas. → go to STEP 2
- I was NOT born in Texas. STOP. You must contact your birth state or country to obtain your birth certificate.

### STEP 2 - PHOTO ID

- I have one of the photo IDs listed below:
  - prison ID or
  - state/city/county ID card or
  - DPS issued driver's license or ID card or
  - student ID or
  - government employment badge or card or
  - military ID.

- I do not have my TDCJ-ID or other photo ID. → Go to STEP 4

### STEP 3 – COMPLETE AND SUBMIT BVS FORM

- Complete application for a certified copy of a birth certificate, available from [Texas Bureau of Vital Statistics \(BVS\)](#).

\_\_\_\_\_ submit in person (bring photo ID) and \$30 check or money order<sup>15</sup>

\_\_\_\_\_ submit by mail (need copy of photo ID) and check or money order for fee.

### STEP 4 – NO PHOTO ID

- Obtain a copy of the photo ID of an immediate family member, or
- Obtain copies of two documents showing your name (examples: utility bill; Social Security card)

One of the documents submitted must have your signature.

Complete STEP 3 with above documents instead of photo ID.

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<sup>13</sup> To AMEND or CORRECT an existing birth certificate, go to [www.dshs.state.tx.us/vs/regproc/faq/amendment.shtm#a1](http://www.dshs.state.tx.us/vs/regproc/faq/amendment.shtm#a1)

<sup>14</sup> A birth certificate alone is insufficient proof of identity for a Texas driver's license or ID, but can be used along with other proof of identity acceptable to the Texas Department Public Safety (DPS).

<sup>15</sup> By mail to Texas Vital Records, Department of State Health Services, P.O. Box 12040 Austin, TX 78711-2040; In person: 1100 West 49th Street Austin, TX 78756 during regular business hours.

**APPENDIX C:  
STEPS TO APPLY FOR OR REPLACE SOCIAL SECURITY CARD**

- I want to *replace* my lost Social Security card. Contact the Social Security Administration (SSA)
- Complete [Application for a Social Security Card, Form SS-5](#).
  - Telephone (toll free) 1-800-772-1213.
  - Apply to local office in person – for locations, call 1-800-772-1213 or visit [www.ssa.gov/ssnumber](http://www.ssa.gov/ssnumber).
- I want to *apply* for a Social Security Number (SSN). The SSA requires applicants to show evidence of proof of U.S. *citizenship* or immigration status, *age*, and *identity*. Some documents serve as evidence in more than one category. A US birth certificate is evidence of both citizenship and age.

**STEP 1: PROOF OF CITIZENSHIP OR IMMIGRATION STATUS**

- I have one or more of the following Evidence of US Citizenship
- U.S. birth certificate,
  - U.S. passport,
  - Consular Report of Birth
  - Certificate of Naturalization or
  - Certificate of Citizenship.

If NO, → go to STEP 2. If YES, go to →STEP 3

**STEP 2 EVIDENCE OF IMMIGRATION STATUS**

- I have Evidence of Immigration Status:

Current unexpired Department of Homeland Security (DHS) document showing immigration status (e.g., Form I-551, I-94, or I-766).<sup>16</sup>

**STEP 3 EVIDENCE OF AGE**

- I have one or more of the following Evidence of Age:
- Birth certificate - If no birth certificate, may accept another document showing age, such as:
  - U.S. hospital record of birth (created at the time of birth)
  - Religious record established before age five showing age or date of birth
  - Passport
  - Final Adoption Decree (the adoption decree must show that the birth information was taken from the original birth certificate)

**STEP 4 EVIDENCE OF IDENTITY**

- I have one or more of the following Evidence of Identity:
- U.S. driver's license; or

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<sup>16</sup> International student and exchange visitors must also have Form I-20, DS-2019, or a letter authorizing employment from F-1 or J-1 sponsor. NOT ACCEPTED: receipt showing application document. If no work authorization, will issue card for valid non-work reason. Card marked to show not work authorized.



- U.S. State-issued non-driver identity card; or
- U.S. passport

\*Documents must show legal name AND biographical information (date of birth, age, or parents' names) and/or physical information (photograph, or physical description - height, eye and hair color, etc.).

SSA may accept *other documents* that show *legal name and biographical information*

- U.S. military identity card,
- Certificate of Naturalization,
- employee identity card,
- certified copy of medical record (clinic, doctor or hospital),
- health insurance card,
- Medicaid card, or school identity card/record.

NOT ACCEPTED as evidence of identity:

- birth certificate
- hospital souvenir birth certificate, social security card stub or a social security record

#### STEP 5. APPLICATION

Complete and print [Application for a Social Security Card, Form SS-5](#) then deliver or mail it *with supporting documents* to the SSA. For the nearest office, use the SSA's online [local office locator](#) or call 2-1-1 for information.

**APPENDIX D-1:  
SAMPLE PETITION AND ORDER FOR DECLARATORY JUDGMENT OF NAME**

Note:

These forms are for individuals who are ineligible to petition for a change of name. They are intended only as an example and guide for drafting.<sup>17</sup> Please seek the help of an attorney before seeking a declaratory judgment.

**NO.** \_\_\_\_\_

IN RE: [name of petitioner]

§ IN THE DISTRICT COURT  
§  
§ \_\_\_\_\_<sup>th</sup> JUDICIAL DISTRICT  
§  
§ \_\_\_\_\_ COUNTY, TEXAS

**PETITION FOR DECLARATORY JUDGMENT OF NAME**

1. Discovery in this case is intended to be conducted under level 1 of Rule 190.2 of the Texas Rules of Civil Procedure.

2. This suit is brought by [name of petitioner], Petitioner, who is a resident of [county] County, [state]. [The last three numbers of Petitioner's driver's license number are [numbers] [OR Petitioner has not been issued a driver's license.] [The last three numbers of Petitioner's Social Security number are [numbers]. [OR Petitioner has not been issued a Social Security number.]

Petitioner's SID# is [numbers]. Petitioner's TDCJ# is [numbers].

3. No service is necessary at this time.

4. Petitioner seeks a declaratory judgment pursuant to the Texas Uniform Declaratory Judgments Act. Tex. Civ. P. & Rem. Code Ch. 37. There exists a genuine controversy as to Petitioner's name that would be terminated by the granting of declaratory judgment.

5. Petitioner requests that his name be declared as [name of petitioner] because the name on Petitioner's birth certificate conflicts with the name on Petitioner's [driver's license, state ID, other documents].

6. Petitioner's Birth Certificate (Attachment A) lists petitioner's name as [incorrect name]. Petitioner requests a declaratory judgment declaring his legal name to be \_\_\_\_\_ for the following reasons:

a. Petitioner's birth certificate cannot be amended because [name of petitioner] is on probation from a final felony conviction. To amend Petitioner's last name on as it appears on [his] birth certificate, the Texas Bureau of Vital Statistics requires a certified copy of a court order granting a change of name. In Texas, an adult change of name change can be granted at the court's discretion to a person with a final felony conviction only if the person has been pardoned, discharged from TDCJ or completed probation ordered by a court, and *not less than two years* have passed from the date of the receipt of discharge or completion of probation Tex. Fam. Code § 45.103. Petitioner cannot meet these requirements because he remains under supervision and is not expected to be discharged until \_\_\_\_\_;

<sup>17</sup>Visit your county local law library for other styles of forms. For a list of all county law libraries in Texas, click [here](#).

b. Accurate proof of identity is required in order to obtain a state-issued driver's license or identity card. In addition to being the most commonly accepted form of identification; a valid state-issued ID *must be carried* by anyone released to parole or mandatory supervision as a condition of release. According to the Texas Board of Pardons and Paroles, this requirement is to be "strictly enforced." Title 37, Tex. Admin. Code 145.27. Because his birth certificate differs from his other proof of identity, Petitioner cannot get a Texas ID or driver's license and therefore is unable to comply with the above condition.

c. Without accurate proof of identity Petitioner cannot secure employment. Petitioner's parole officer [Officer \_\_\_\_\_], has signed an Affidavit (Attachment \_\_\_\_\_) stating that petitioner's inability to get employment has hampered his ability to succeed [or other similar statements as to identity problems arising due to conflicting names].

d. Petitioner has always been known as [name of petitioner]. Attachments \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ show his name to be \_\_\_\_\_. [Attach copies of documents showing name of petitioner, for example school records, social security card]. Petitioner's Texas Inmate Identification Card (Attachment \_\_\_\_\_) identifies him as [name of petitioner]. Petitioner's Certificate of Parole (Attachment \_\_\_\_\_) identifies him as [name of petitioner].

e. Petitioner has included with this Petition a legible and complete set of his fingerprints on a fingerprint card (Attachment \_\_\_\_\_) in a format acceptable to the Texas Department of Public Safety and the Federal Bureau of Investigation under the name of [name of petitioner]. Petitioner has never used any name other than [name of petitioner].

#### STATEMENT OF LAW

The purpose of the Uniform Declaratory Judgments Act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered. Tex. Civ. Prac.& Rem. Code Ann. §37.002(a). A person who has an interest in a writing "whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Tex. Civ. Prac.& Rem. Code Ann. § 37.004(a).

There exists a genuine controversy herein that would be terminated by the granting of declaratory judgment. Petitioner's registered name with the Social Security Administration and the Texas Department of Corrections is [name of petitioner], while his birth certificate reflects his name as [conflicting/alternative name]. Petitioner is unable to change his birth certificate or change his name because he is a felon. Tex. Fam. Code Ann. § 45.103.

Texas law protects the legitimate governmental interest of being able to identify persons sought on warrant and detainer and to preserve the criminal history of felons. See *Matthews v. Morales*, 23 F.3d 118, 119 (5th Cir. 1994). Petitioner's registered name with the Texas Department of Corrections is [name of petitioner], and petitioner simply requests the Court to enter a declaratory judgment which conforms his name to the records of the Texas Department of Corrections.

In order to obtain a Texas Identification Card or Driver's License for the first time, or to renew a license that expired over two years from the time of application, the applicant must present proof of identity that will be accepted by the Texas Department of Public Safety:

1. One "secondary document," which is an:
  - a. original or certified copy of a birth certificate issued by the appropriate State Bureau of Vital Statistics or equivalent agency;
  - b. original or certified copy of United States Department of State Certification of Birth (issued to United States citizens born abroad); or

- c. original or certified copy of court order with name and date of birth (DOB) indicating an official change of name and/or gender.
2. And two "supporting documents":
- a. school records;
  - b. insurance policy (at least two years old);
  - c. vehicle title;
  - d. military records;
  - e. unexpired military dependent identification card;
  - f. original or certified copy of marriage license or divorce decree;
  - g. voter registration card;
  - h. Social Security card;
  - i. pilot's license;
  - j. concealed handgun license;
  - k. Texas driver's license temporary receipt;
  - l. unexpired photo DL or photo ID issued by another (United States) state, US territory, the District of Columbia or Canadian province;
  - m. expired photo DL or photo ID issued by another (United States) state, US territory, the District of Columbia or Canadian province that is within two years of the expiration date;
  - n. a consular document issued by a state or national government; or
  - o. an offender identification card or similar form of identification issued by the Texas Department of Criminal Justice. Tex. Admin. Code 15 §24.

Because Petitioner's birth certificate states his name is [conflicting name], and his supporting controvert the birth certificate and state his name is [name of petitioner], Petitioner cannot prove his identity by using his birth certificate. He cannot amend his birth certificate without a court order. He cannot petition for a name change because of his felony status. His only other option is to obtain a Court Order resolving the conflict and establishing his legal name as [name of petitioner].

WHEREFORE, Petitioner requests the Court enter a Declaratory Judgment of Name stating this his name is [name of petitioner].

Respectfully Submitted,

BY: \_\_\_\_\_  
 [Attorney for Petitioner or Petitioner Pro Se]  
 [Address and telephone]

I, [name of petitioner] (also known as \_\_\_\_\_), Petitioner, swear under oath that the facts stated in the above Petition for Declaratory Judgment of Name are true and correct.

\_\_\_\_\_  
 [signature of petitioner]

SIGNED under oath before me on .

Notary Public, State of Texas

Certificate of Service

I certify that a true copy of the above was served on:

[name of County Attorney]

[name of District Attorney]

County Attorney  
[address]  
\_\_\_\_\_, Texas

District Attorney, \_\_\_\_\_ County  
[address]  
\_\_\_\_\_ Texas

[name of Chief of Police]  
\_\_\_\_\_ Police Department  
[address]  
\_\_\_\_\_, Texas

In accordance with the Texas Rules of Civil Procedure on \_\_\_\_\_, 20\_\_\_. [Attorney for  
Petitioner OR Petitioner pro se]

\_\_\_\_\_  
[Name of attorney or Petitioner pro se]

**APPENDIX D-2:  
SAMPLE - DECLARATORY JUDGMENT OF NAME - ORDER**

NO. \_\_\_\_\_

IN RE: [name of petitioner]

§ IN THE DISTRICT COURT  
§  
§ \_\_\_\_\_<sup>th</sup> JUDICIAL DISTRICT  
§  
§ \_\_\_\_\_ COUNTY, TEXAS

**DECLARATORY JUDGMENT OF NAME**

On \_\_\_\_\_ Court heard Petitioner's Petition for Declaratory Judgment of Name.

1. *Appearances*

The Petitioner, \_\_\_\_\_ was present [with/without] and without an attorney.

2. *Jurisdiction*

The Court, after examining the record and the evidence and argument of counsel, finds that it has jurisdiction over the subject matter and the parties in this case. All persons entitled to citation were properly cited.

3. *Record*

The record of testimony [was /was not] duly reported to the court reporter.

4. *Findings*

The Court finds that Petitioner's personal information is as follows:

Petitioner's home address:

\_\_\_\_\_  
*street address city state zip code*

Petitioner's Social Security Number: \_\_\_\_\_

Petitioner's Driver's License number: \_\_\_\_\_

State that issued license \_\_\_\_\_.

Petitioner's Date of Birth: \_\_\_\_\_  
*month day year*

Petitioner's Place of birth:

\_\_\_\_\_  
*city county state country*

Petitioner's FBI (Federal Bureau of Investigation) number is: \_\_\_\_\_.

Petitioner's SID (State Identification) number is: \_\_\_\_\_.

Petitioner has been finally convicted of a felony and is currently under supervision.

Petitioner [is/is not] a registered sex offender.

Petitioner attached a legible and complete copy of Petitioner's fingerprints on a Department of Public Safety or Federal Bureau of Investigation fingerprint card to the Petition.

The Court further finds that there exists a genuine controversy as to Petitioner's name that would be terminated by the granting of declaratory judgment under the Texas Uniform Declaratory Judgments Act, Tex. Civ. P. & Rem. Code Ch. 37. Granting a declaratory judgment to resolve the conflict between petitioner's names is to the benefit and in the interest of the public.

5. *Orders*

The Court declares that Petitioner's name is (*current name*):

Current name: \_\_\_\_\_  
*first middle last*

and is not this name: \_\_\_\_\_  
*first middle last*

6. *Other Orders*

The Court has the right to make other orders, if needed, to clarify or enforce this order. Any orders requested that do not appear above are denied.

\_\_\_\_\_  
Date of Judgment

\_\_\_\_\_  
Judge Presiding

## APPENDIX E: STEPS TO ORDER A TEXAS CRIMINAL HISTORY RECORD

Start here. Check each as it applies and it will lead you to the next step(s).

### STEP 1 CHOOSE TYPE OF CRIMINAL HISTORY RECORD

Choose between a name-based search (what the public can see), or a fingerprint search (by law, visible only to you, law enforcement, certain government agencies and other entities).

- Name-based online search – basic information available to the public. → Go to STEP2
- Fingerprint-based searched – comprehensive, complete history available to law enforcement, licensing agencies and others authorized by statute to view it. --> Go to STEP 3

### STEP 2 NAME-BASED SEARCH

- In person: go to nearest DPS/driver license office and request name-based search. The search costs \$10.00.
- Online

You will need:

- o Access to a computer
- o Access to a printer or flash drive (to save the results)
- o A credit card (does not have to be yours)

\_\_\_ Search through DPS - Go to the DPS Criminal Record Search public site:

<https://records.txdps.state.tx.us/DpsWebsite/index.aspx>

OR

\_\_\_ Search online private vendor, such as Public Data [www.publicdata.com](http://www.publicdata.com). Cost varies based on the vendor and the records sought.

### STEP 3 FINGERPRINT-BASED SEARCH

You will need:

- DPS Form CR-63, Review of Criminal History Information (attached at \_\_\_)<sup>18</sup>
- Fingerprint card less than 6 months old.
- \$24.95 (\$15.00 for record check plus \$9.95 for fingerprints)
  - o *Electronic submission:*  
Fingerprints can be sent to DPS electronically through L-1 Enrollment, a.k.a. Fingerprint Applicant Services of Texas (FAST). The record results will be mailed to you at the address you provided.

\_\_\_ Complete [DPS Form CR-63](#) (FAST pass form).

\_\_\_ Make an appointment to be fingerprinted. Go to [www.L1enrollment.com](http://www.L1enrollment.com) for Texas FAST locations, or call 1-888-467-2080.

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<sup>18</sup> Or from DPS, [www.txdps.state.tx.us/internetforms/Forms/CR-63.pdf](http://www.txdps.state.tx.us/internetforms/Forms/CR-63.pdf)



\_\_\_\_ Bring a check or money order for \$24.95 to the appointment.

o *Mail submission:*

\_\_\_\_ Complete DPS Form CR-63 (FAST pass form attached \_\_\_\_).

\_\_\_\_ Make sure your fingerprint card is less than 6 months old.  
If not, make an appointment to be fingerprinted. Go to [L1enrollment.com](http://L1enrollment.com) for Texas FAST locations, or call 1-888-467-2080.

\_\_\_\_ Bring a check or money order for \$24.95 to the appointment.

Mail the (FAST) pass form, check or US money order for \$24.95 and fingerprint card to:

L-1 Enrollment Services  
1650 Wabash Avenue, Suite D  
Springfield, IL 62704

The card will be scanned, then sent to DPS. The record will be mailed to you or someone designated by you (such as an employer) in about 10 business days.

## APPENDIX F: STEPS FOR EXPUNCTION OF CRIMINAL HISTORY RECORD

### STEP 1. DETERMINE ELIGIBILITY FOR EXPUNCTION

Note: Expunction is available only to clear arrests that did not lead to conviction and for Class C misdemeanors resulting in deferred adjudication. Expunction *cannot* remove records of adult criminal convictions except 1) where the person has been pardoned; 2) where the conviction was thrown out on appeal, or 3) where the person was granted relief on the basis of actual innocence in a court order finding the same. Tex. Code Crim. P. Art. 55.01(a)(1)(B)(ii).

You must meet all of these requirements. If you do not, STOP.

- You were released after your arrest and not charged or convicted of a crime.
- You have never been under community or court supervision for this arrest. You have not attended any classes, paid any fines, or been placed on any kind of probation for this arrest.
- Your arrest was not part of a “criminal episode,” and you have never been charged for any other crime as a part of a criminal episode.

### STEP 2. GATHER INFORMATION FOR EXPUNCTION

You will need:

- An official criminal history record.<sup>19</sup>
- Your fingerprint record.
- Court Filing Fee. Call the clerk of the court where you intend to file for the total cost of filing the Petition for Expunction. If you cannot afford the fee, complete an
  - o Affidavit of Inability to Pay Court Costs

### STEP 3. COMPLETE PETITION FOR EXPUNCTION

- Complete Petition for Expunction of Criminal Records<sup>20</sup>
- Sign the Petition in front of Notary and make extra copies.

### STEP 4. FILE PETITION FOR EXPUNCTION

- File the original petition (not copy) in the district court for the county where
  - o You were arrested, OR
  - o The offense was alleged to have occurred.<sup>21</sup>

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<sup>19</sup> Your criminal history record will usually contain all of the information you must include in the Petition for Expunction required by Tex. Code Crim. P. Art 55.02 Sec. (2): (b) The petition must be verified and shall include the following or an explanation for why one or more of the following is **not** included:

(1) the petitioner's full name; sex; race; date of birth; driver's license number; social security number; and address at the time of the arrest;

(2) the offense charged against the petitioner;

(3) the date the offense charged against the petitioner was alleged to have been committed;

(4) the date the petitioner was arrested;

(5) the name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;

(6) the name of the agency that arrested the petitioner;

(7) the case number and court of offense.

<sup>20</sup> [Self help forms and instructions for Expunction](#) may be downloaded from Texas Law Help, or visit your local law library for other styles of forms. For a list of all county law libraries in Texas, click [here](#).

- Ask the clerk to file-stamp your extra copies.
- Pay the filing fee to the clerk of the court.
- Ask the clerk to set a hearing on the Petition.<sup>22</sup>

#### STEP 5. ATTEND THE EXPUNCTION HEARING

You will need:

- Order Directing Expunction of Criminal Records. Fill in the information in the Order that you used to complete your Petition. Leave the judge's signature bar blank. Take the completed Order to your hearing.
- If the judge agrees, s/he will sign the Order. The clerk of the court will send a certified copy of the Order to everyone listed on your Petition ordering them to return or destroy all records about this arrest.<sup>23</sup>
- Get a certified copy of the Order from the clerk's office to keep with our files (usually about \$1 a page). This is important in case you need to prove that the Order was granted.

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<sup>21</sup> Tex. Code Crim. P. Art. 55.02 §(2)(a). Both the criminal history record and fingerprint record are available through the Texas Dept. of Public Safety. The cost for both is about \$30.00. To find your local DPS office, go to [www.txdps.state.tx.us/administration/driver\\_licensing\\_control/rolodex/search.asp](http://www.txdps.state.tx.us/administration/driver_licensing_control/rolodex/search.asp) or call 2-1-1 to find the location nearest you.

<sup>22</sup> Tex. Code Crim. P. Art. 55.02§ (2)(c) The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give to each official or agency or other governmental entity named in the petition reasonable notice of the hearing.

<sup>23</sup> Tex. Code Crim. P. Art. 55.02 §5(d).

**APPENDIX G-1  
PETITION FOR NONDISCLOSURE - FELONY OFFENDER<sup>24</sup>**

Note: These forms are intended only as an example and guide for drafting.<sup>25</sup> Please seek the help of an attorney.

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS

§  
§  
§  
§  
§  
§  
§

IN THE \_\_\_\_\_ DISTRICT COURT

VS.

OF \_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_,  
DEFENDANT

**PETITION FOR NONDISCLOSURE  
OF CRIMINAL HISTORY RECORD INFORMATION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW \_\_\_\_\_ (hereinafter "defendant") and moves the Court to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense described more particularly below. The defendant would respectfully show the Court the following:

**I.**

On \_\_\_\_\_, the defendant entered a plea of guilty or nolo contendere in this cause to the felony offense of \_\_\_\_\_. This Court deferred further proceedings in this cause without entering an adjudication of guilt and placed the defendant under the supervision of the court or an officer under the supervision of the court.

**II.**

On \_\_\_\_\_, at the end of the period of supervision, the Court dismissed the proceedings in this cause and discharged the defendant from further deferred adjudication community supervision.

**III.**

It has been five or more years since the date that the Court dismissed the proceedings in this cause and discharged the defendant from further deferred adjudication community supervision.

**IV.**

Since the date that the Court dismissed the proceedings in this cause and discharged the defendant from further deferred adjudication community supervision, the defendant has not been convicted or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable

<sup>24</sup> Adapted from forms developed by the Harris County District Clerk, originals available at [http://app.dao.hctx.net/FAQs/4/Other\\_Divisions/7/Deferred\\_Adjudication.aspx](http://app.dao.hctx.net/FAQs/4/Other_Divisions/7/Deferred_Adjudication.aspx)

<sup>25</sup> Visit your county local law library for other styles of forms. For a list of all county law libraries in Texas, click [here](#).

by fine only.

**V.**

Defendant has not been previously convicted or placed on deferred adjudication community supervision for:

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or
- (4) any other offense involving family violence, as defined by Section 71.004, Family Code.

**VI.**

Issuance of an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which defendant successfully completed deferred adjudication community supervision is in the best interest of justice.

**VII.**

Pursuant to Section 411.081(g)(2) of the Texas Government Code, the defendant authorizes that the clerk of the court send a copy of the order of nondisclosure to the Crime Records Service of the Department of Public Safety by secure electronic mail.

**VIII.**

In accordance with the Local Rules of this Court, this matter has been set for a hearing fourteen days after the date that the petition was filed.

**THEREFORE**, it is respectfully requested that the Court issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which defendant successfully completed deferred adjudication community supervision.

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Petitioner)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (phone number)

Petitioner pro se.



Since the date that the Court dismissed the proceedings in this cause and discharged the defendant from further deferred adjudication community supervision, the defendant has not been convicted or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only.

**V.**

Defendant has not been previously convicted or placed on deferred adjudication community supervision for:

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or
- (4) any other offense involving family violence, as defined by Section 71.004, Family Code.

**VI.**

Issuance of an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which defendant successfully completed deferred adjudication community supervision is in the best interest of justice.

**VII.**

Pursuant to Section 411.081(g)(2) of the Texas Government Code, the defendant authorizes that the clerk of the court send a copy of the order of nondisclosure to the Crime Records Service of the Department of Public Safety by secure electronic mail.

**VIII.**

In accordance with the Local Rules of this Court, this matter has been set for a hearing fourteen days after the date that the petition was filed.

**THEREFORE**, it is respectfully requested that the Court issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which defendant successfully completed deferred adjudication community supervision.

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (defendant)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (phone number)

Petitioner pro se.

**APPENDIX G-3:  
PETITION FOR NONDISCLOSURE - MISDEMEANOR OFFENDER - IMMEDIATE ELIGIBILITY<sup>28</sup>**

Note: These forms are intended only as an example and guide for drafting.<sup>29</sup> Please seek the help of an attorney.

**CAUSE NO.** \_\_\_\_\_

THE STATE OF TEXAS	§	IN THE _____ DISTRICT COURT
	§	IN COUNTY CRIMINAL COURT
	§	AT LAW NUMBER _____
VS.	§	
	§	OF _____ COUNTY, TEXAS
_____,	§	
DEFENDANT	§	

**PETITION FOR NONDISCLOSURE  
OF CRIMINAL HISTORY RECORD INFORMATION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW \_\_\_\_\_ (hereinafter "defendant") and moves the Court to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense described more particularly below. The defendant would respectfully show the Court the following:

**I.**

On \_\_\_\_\_, the defendant entered a plea of guilty or nolo contendere in this cause to the offense of \_\_\_\_\_. This offense was neither a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46 of the Texas Penal Code, nor a felony. This Court deferred further proceedings in this cause without entering an adjudication of guilt and placed the defendant under the supervision of the court or an officer under the supervision of the court.

**II.**

On \_\_\_\_\_, at the end of the period of supervision, the Court dismissed the proceedings in this cause and discharged the defendant from further deferred adjudication community supervision.

**III.**

Since the date that the Court dismissed the proceedings in this cause and discharged the defendant from further deferred adjudication community supervision, the defendant has not been convicted or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only.

**IV.**

Defendant has not been previously convicted or placed on deferred adjudication community supervision for:

<sup>28</sup> Adapted from forms developed by the Harris County District Clerk, originals available at [http://app.dao.hctx.net/FAQs/4/Other\\_Divisions/7/Deferred\\_Adjudication.aspx](http://app.dao.hctx.net/FAQs/4/Other_Divisions/7/Deferred_Adjudication.aspx)

<sup>29</sup> Visit your county local law library for other styles of forms. For a list of all county law libraries in Texas, click [here](#).



- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or
- (4) any other offense involving family violence, as defined by Section 71.004, Family Code.

**V.**

Issuance of an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which defendant successfully completed deferred adjudication community supervision is in the best interest of justice.

**VI.**

Pursuant to Section 411.081(g)(2) of the Texas Government Code, the defendant authorizes that the clerk of the court send a copy of the order of nondisclosure to the Crime Records Service of the Department of Public Safety by secure electronic mail.

**VII.**

In accordance with the Local Rules of this Court, this matter has been set for a hearing fourteen days after the date that the petition was filed.

**THEREFORE**, it is respectfully requested that the Court issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which defendant successfully completed deferred adjudication community supervision.

Respectfully submitted,

\_\_\_\_\_ (defendant)  
\_\_\_\_\_ (address)  
\_\_\_\_\_  
\_\_\_\_\_ (phone number)

Petitioner pro se.

**APPENDIX H  
STEPS FOR NONDISCLOSURE OF CRIMINAL HISTORY RECORD**

Note: The following are basic instructions. More detailed instructions and court forms (examples from Collin County) are available from the [Texas Law Help](http://texaslawhelp.org)<sup>30</sup>

**STEP 1. DETERMINE ELIGIBILITY FOR NONDISCLOSURE**

You must meet *all* of the following requirements. If you do not, STOP. Your case is ineligible for nondisclosure.

- You were released after your arrest and not charged or convicted of a crime.
- You have never been under community or court supervision for this arrest. You have not attended any classes, paid any fines, or been placed on any kind of probation for this arrest.
- Your arrest was not part of a “criminal episode,” and you have never been charged for any other crime as a part of a criminal episode.
- Your offense does not fall under the second column below, “Ineligible Offenses”

<b>NONDISCLOSURE</b>	
<b>ELIGIBLE OFFENSES</b>	<b>INELIGIBLE OFFENSES</b>
All misdemeanors NOT listed below - no waiting period; for those listed - 2 year waiting period	Never eligible regardless of the outcome (even completion of deferred adjudication)
Abuse of corpse	Aggravated sexual assault
Advertising for placement of child	Sexual assault
Aiding suicide	Prohibited sexual conduct (incest)
Assault	Aggravated kidnapping
Bigamy	Burglary of a habitation with intent to commit any of the above offenses
Cruelty to animals	Indecency with a child
Deadly conduct	Compelling prostitution
Destruction of flag	Sexual performance by a child
Discharge of firearm	Possession or promotion of child pornography
Disorderly conduct	Unlawful restraint, kidnapping, or aggravated kidnapping of a person younger than 17 years of age
Disrupting meeting or procession	Attempt, conspiracy, or solicitation to commit any of the above offenses
Dog fighting	Capital murder
False alarm or report	Murder
Harassment	Injury to a child, elderly individual, or disabled individual
Harboring runaway child	Abandoning or endangering a child
Hoax bombs	Violation of protective order or magistrate's order
Indecent exposure	Stalking
Interference with emergency telephone call	Any other offense involving family violence
Leaving a child in a vehicle	
Making a firearm accessible to a child	
Obstructing highway or other passageway	
Possession, manufacture, transport, repair or sale of switchblade knife or knuckles	
Public lewdness	
Riot	
Silent or abusive calls to 9-1-1 service	
Terroristic threat	
Unlawful carrying of handgun by license holder	
Unlawful carrying weapons	
Unlawful possession of firearm	
Unlawful restraint	
Unlawful transfer of certain weapons	

<sup>30</sup> The complete link: [http://texaslawhelp.org/documents/303361Collin\\_County\\_Nondisclosure.pdf?stateabbrev=tx/](http://texaslawhelp.org/documents/303361Collin_County_Nondisclosure.pdf?stateabbrev=tx/)

If you checked all 4 boxes above, go to → STEP 2

## STEP 2. DETERMINE THE WAITING PERIOD FOR NONDISCLOSURE

The waiting period depends on the offense subject to nondisclosure.

Note: the waiting period begins *not* from the date the plea was entered, but from the date the deferred adjudication was concluded.

- Felonies: It has been 5 years from date of discharge and dismissal.
- Misdemeanors in the “Eligible” Column in the preceding table -2 years from the of discharge and dismissal
- All other misdemeanors not listed above: no waiting period

## STEP 3 - GATHER INFORMATION FOR NONDISCLOSURE

You will need:

- The original court and case number in which the deferred adjudication was imposed.
- The date of the original plea of guilty or no contest.
- The offense for which you were placed on deferred adjudication.
- The date upon which the court dismissed the proceedings and discharged you from deferred adjudication community supervision.

This information is generally available from the district clerk's office or from your criminal history record.

## STEP 4. COMPLETE PETITION FOR NONDISCLOSURE

See APPENDIX G to this Guide for sample Nondisclosure forms.

## STEP 5 FILE PETITION FOR NONDISCLOSURE

- File the Petition for Nondisclosure with the court that entered the order.
- Pay the a to the clerk of the court in addition to any other filing fees required by that county.
- Ask the clerk to set a hearing date. (If the offense is a felony, you may have to consult the judge's court coordinator). The hearing is usually set in the original court 14 days after you file the Petition.

## STEP 5. APPEAR AT THE NONDISCLOSURE HEARING

- Do not miss the hearing date, or your petition may be dismissed.
- You will need one copy of the Order with information filled out for the judge to sign:
- You need to be prepared to provide evidence of the following:

You entered a plea of no contest or guilty to the offense

- The Court placed you on deferred adjudication community supervision.
- The Court dismissed the proceedings in this case and discharged you from deferred adjudication community supervision.
- You are not disqualified from filing a petition under Section 411.081(e).
- The petition was timely filed under Section 411.081(d).

The court will to grant or deny your petition. If it is granted, the court will issue an order preventing public disclosure of the offense.

Texas Statutes Tiered Under the Federal Adam Walsh Act

**TEXAS CCP CHAPTER 62, SUBCHAPTER I, EARLY TERMINATION OF CERTAIN PERSONS OBLIGATED TO REGISTER.**

Art. 62.401. DEFINITION. In this subchapter, "council" means the Council on Sex Offender Treatment.

Art. 62.402. DETERMINATION OF MINIMUM REQUIRED REGISTRATION PERIOD. (a) The council by rule shall determine the minimum required registration period under 42 U.S.C. Section 14071 (\*\*\*Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program) for each reportable conviction or adjudication under this chapter, if this state is to receive the maximum amount of federal money available to a state as described by that law.

(b) After determining the minimum required registration period for each reportable conviction or adjudication under Subsection (a), the council shall compile and publish a list of reportable convictions or adjudications for which a person must register under this chapter for a period that exceeds the minimum required registration period under federal law.

(c) To the extent possible, the council shall periodically verify with the Bureau of Justice Assistance or another appropriate federal agency the accuracy of the list of reportable convictions or adjudications described by Subsection (b). Reenacted and amended by Acts 2005, 79th Leg., Ch. 1008, Sec. 1.01, eff. September 1, 2005

\*\*\* NOTE: In July 2006 President George Bush signed into law the federal Sex Offender Registration and Notification Act (SORNA) The act is cited as the Adam Walsh Protection and Safety Act (AWA) which superseded the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

Texas Offense	Length of Duty for Registration Under Texas Law	Length of Duty by Tier Under Federal Law, Single Conviction
\$ 43.05(a)(1), Compelling prostitution	10 years post discharge	Not required. Registration of this offense exceeds SORNA's requirements
\$ 21.08, Indecent exposure (two or more convictions required for registration)	10 years post discharge	Not required. Registration of this offense exceeds SORNA's requirements.
\$ 20.02, Unlawful restraint and victim is under 17	10 years post discharge, unless there is any other reportable conviction, at which time it becomes a lifetime duty.	Tier I Under SORNA, this is the equivalent of non-parental unlawful restraint; if committed by a parent, SORNA does not require registration.
\$ 21.11(a)(2), Indecency with a child, exposure	10 years post discharge, unless there is a prior or subsequent reportable conviction at which time it becomes a lifetime duty.	Tier I
\$ 43.26(a), Possession of child pornography	Lifetime	Tier I
\$ 33.021, Online solicitation of a minor	10 years post discharge	Tier II

**Texas Statutes Tiered Under the Federal Adam Walsh Act**

<b>Texas Offense</b>	<b>Length of Duty for Registration Under Texas Law</b>	<b>Length of Duty and Tier Under Federal Law, Single Conviction</b>
§ 43.05(a)(2), Compelling prostitution and victim is under 17	Lifetime	Tier II
§ 43.25, Sexual performance by a child	Lifetime	Tier II
§ 43.26(e), Promotion of child pornography	Lifetime	Tier II
§ 21.11(a)(1), Indecency with a child, contact	Lifetime	Tier II if victim is 13 or less than 17 Tier III if the victim is under 13
§ 20.04(a)(4), Aggravated kidnapping with intent to violate or abuse victim sexually	Lifetime	Tier III
§ 21.02, Continuous sexual abuse of young child or children	Lifetime	Tier III
§ 22.011, Sexual assault	Lifetime	Tier III
§ 22.021, Aggravated sexual assault	Lifetime	Tier III
§ 25.02, Prohibited sexual conduct	Lifetime	Tier III
§ 30.02(d), Burglary of a habitation with intent to commit a prohibited sex act	Lifetime	Tier III
Any attempts, conspiracies, and solicitations of any of the above listed offenses	10 years post discharge	Treated as if the offense had been completed.
§ 30.02(d), Burglary of a habitation with intent to commit a prohibited sex act	Lifetime	Tier III
Any attempts, conspiracies, and solicitations of any of the above listed offenses	10 years post discharge	Treated as if the offense had been completed.

\*\*\*Any questions regarding the Tiering of Texas Offenses can be directed to the following:

U.S. Department of Justice, Office of Justice Programs's SMART Office, Website: <http://www.ojp.usdoj.gov/smart/index.htm>  
 810 7th Street, NW  
 Washington, DC 20531  
 Phone: 202-514-4689 Fax: 202-616-2906  
[GetSMART@usdoj.gov](mailto:GetSMART@usdoj.gov)

**Texas Statutes Tiered Under the Federal Adam Walsh Act**

**GLOSSARY**

**TEXAS CHAPTER 62**

**Art. 62.403. INDIVIDUAL RISK ASSESSMENT.** (a) The council by rule shall establish, develop, or adopt an individual risk assessment tool or a group of individual risk assessment tools that:

- (1) evaluates the criminal history of a person required to register under this chapter; and
  - (2) seeks to predict:
    - (A) the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and
    - (B) the continuing danger, if any, that the person poses to the community.
- (b) On the written request of a person with a single reportable adjudication or conviction that appears on the list published under Article 62.402(b), the council shall:
- (1) evaluate the person using the individual risk assessment tool or group of individual risk assessment tools established, developed, or adopted under Subsection (a); and
  - (2) provide to the person a written report detailing the outcome of an evaluation conducted under Subdivision (1).
- (c) An individual risk assessment provided to a person under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

**Art. 62.404. MOTION FOR EARLY TERMINATION.** (a) A person required to register under this chapter who has requested and received an individual risk assessment under Article 62.403 may file with the trial court that sentenced the person for the reportable conviction or adjudication a motion for early termination of the person's obligation to register under this chapter. (b) A motion filed under this article must be accompanied by:

- (1) a written explanation of how the reportable conviction or adjudication giving rise to the movant's registration under this chapter qualifies as a reportable conviction or adjudication that appears on the list published under Article 62.402(b); and
- (2) a certified copy of a written report detailing the outcome of an individual risk assessment evaluation conducted under Article 62.403(b)(1).



APPENDIX J

TEXAS DRIVER RESPONSIBILITY PROGRAM  
Financial Affidavit  
(In support of request for reduction of surcharge payment)



Print Full Name: \_\_\_\_\_

DL/ID/DPS Assigned Number: \_\_\_\_\_

MSB Account Number(s): \_\_\_\_\_

All questions must be answered in full and the form notarized for the application to be reviewed.

The following information will be used to determine your ability to pay your surcharge(s). You must be living at or below 125% of the federal poverty level to qualify for a reduction. **NOTE: You may be randomly selected to submit supporting document(s) based on your answers to the following questions.**

**Employment:**

(Provide gross income, before taxes)

Are you now employed? Yes  No  Self Employed

If yes, what is the Name and Address of employer: \_\_\_\_\_

If yes, how much do you earn per month? \_\_\_\_\_

If no, give date of last employment and how much you earned per month? \_\_\_\_\_

If no, how much do you earn per month in unemployment? \_\_\_\_\_

If you are married, what is your spouse's monthly income? \_\_\_\_\_

If you are a dependent, what is your parent/guardian's monthly income? \_\_\_\_\_

**Other Income:**

Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? Yes  No

If yes, give the amount received and identify the sources.

Received	Sources

**Cash:**

Do you have any cash on hand or money in a savings and/or checking account? Yes  No

If yes, state the total amount: \_\_\_\_\_

**Dependents:**

Marital Status

Single  Married  Widowed  Separated/Divorced

Total Number of Dependents you support: \_\_\_\_\_

List any persons you actually support and your relationship to them.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**COMPLETE NOTARIZATION ON THE BACK SIDE BEFORE SUBMITTING**





**TEXAS DRIVER RESPONSIBILITY PROGRAM**

**Financial Affidavit**

(In support of request for reduction of surcharge payment)



**OATH BEFORE NOTARY PUBLIC**

**PLEASE ENTER ADDITIONAL INFORMATION IN THIS SPACE**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, BEING  
FIRST DULY SWORN, UNDER OATH, SAYS: THAT HE/SHE IS THE  
APPLICANT IN THIS ACTION AND KNOWS THE CONTENT OF THE  
ABOVE APPLICATION AND CERTIFY UNDER PENALTY OF PERJURY  
THAT THE FOREGOING IS TRUE AND CORRECT.

\_\_\_\_\_  
Signature of Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

DAY OF \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

Please mail the original notarized form to:



PO BOX 16733 – AUSTIN, TX 78761-6733  
TOLL FREE (866) 223-3583  
Mon – Thur 8AM – 9PM, Fri 8AM – 6PM  
Saturday 8AM – 12PM

Print your driver license or ID card #: If you have both, please list both numbers

Print your first and last name

Enter your six character (can be letters and numbers) MSB reference number from your most recent surcharge notice. If you have more than one reference number, you only need to list one.

Put an 'X' inside the box that applies: If you are both employed and working for yourself, please put an 'X' inside the "YES" box only.

If you put an 'X' inside the "YES" box, put the name and address of your employer (street and #, suite # if applicable, city, state, zip code)

If you put an 'X' inside the "YES" box, print your total monthly income before taxes.

(If you put an 'X' inside self employment, DO NOT list your income in this space. You will list self employment income later)

If you put an 'X' inside the "NO" box, put the date of last employment and monthly income before taxes you earned while working at that employer. You must enter an EXACT number. If you enter an income range, your application will be returned to you marked incomplete.

(Good Example: 1/21/11, \$1,500)  
(Poor Example: 1/21/11, \$1,500 - \$5,000)

If you are currently married, what is your spouse's monthly income before taxes?



TEXAS DRIVER RESPONSIBILITY PROGRAM  
Financial Affidavit

(In support of request for reduction of surcharge payment)

Print full name: \_\_\_\_\_  
DL/ID/PRS Assigned Number: \_\_\_\_\_  
Miss Account Number(s): \_\_\_\_\_

All questions must be answered in full and the form returned for the application to be reviewed.

The following information will be used to determine your ability to pay your surcharges. You must be living at or below 125% of the federal poverty level to qualify for a reduction. NOTE: You may be randomly selected to submit supporting documentation based on your answers to the following questions.

Employment:  
Provide gross income, before taxes  
Are you now employed? Yes  No  Self employed

If yes, Name and address of employer: \_\_\_\_\_  
If yes, how much do you earn per month? \_\_\_\_\_  
If no, give date of last employment and how much you earned per month? \_\_\_\_\_

If no, how much do you earn per month in unemployment? \_\_\_\_\_  
If married, how much does your spouse earn per month? \_\_\_\_\_

If a dependent, what is your parent's or guardian's monthly income? \_\_\_\_\_  
Spouse's income: \_\_\_\_\_

If you will be claimed as a dependent on another person's tax return, such as a parent or guardian, what is that person's monthly income before taxes?

Other Income:  
Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? Yes  No

If yes, give the amount received and identify the source:

Received	Source

Call:  
Do you have any cash on hand or money in a savings and/or checking account? Yes  No

If yes, state the total amount: \_\_\_\_\_  
Dependents:  
Married  Single  Married  Separated/Divorced

Total number of dependents: \_\_\_\_\_  
List any persons you actually support and your relationship to them.

COMPLETE NOTIFICATION ON THE BACKSIDE BEFORE SUBMITTING  
page: \_\_\_\_\_

List the names of your dependents and their relationship to you.  
Example: Jon Doe, son; Jane Doe, grandmother

If you received income from any sources 'other' than employment income, or you put an 'X' in the self-employment box earlier, put an 'X' in the "YES" box, otherwise put an 'X' in the "NO" box.

List income for the past 12 months and the source of that income for each row.  
Example: Received: \$10,000  
Source: Self-Employment

If you have any money in a checking, savings, or money market account, put an 'X' inside the "YES" box, otherwise put an 'X' inside the "NO" box

If you put an 'X' inside the "YES" box, list the total amount of money you have in all checking, savings, and money market accounts.

Place an 'X' inside the appropriate box. One of these boxes MUST have an 'X' in it.

List all dependents, whether or not they are living with you. Dependents are people for whom you pay more than 50% of their bills and support

The Notary Public you work with will explain how to fill out this section and will fill part of it out him/herself.



TEXAS DRIVER RESPONSIBILITY PROGRAM  
Financial Affidavit  
In support of request for reduction of surcharge payment:



**OATH BEFORE NOTARY PUBLIC**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, BEING  
FIRST DULY SWORN, UNDER OATH, SAYS THAT HE/SHE IS THE  
APPLICANT IN THIS ACTION AND KNOWS THE CONTENT OF THE  
ABOVE APPLICATION AND CERTIFY UNDER PENALTY OF PERJURY  
THAT THE FOREGOING IS TRUE AND CORRECT.

Signature of Applicant

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

DAY OF \_\_\_\_\_, 20\_\_\_\_

Signature of Notary Public

Please mail the original notarized form to:



PO BOX 16733 - AUSTIN, TX 78761-6733  
TOLL FREE (866) 223-3583  
Mon - Thur 8AM - 9PM, FR 8AM - 6PM  
Saturday 8AM - 12PM

DF-1 (Rev. 04-11)

Page 2

PLEASE ENTER ADDITIONAL INFORMATION IN THIS SPACE

In this space, please list any additional information you wish to include regarding your surcharges or Indigency application.

Once your Indigence application is complete, you must mail it to the address shown here.

**APPENDIX K: - MOTION AND ORDER TO WAIVE SURCHARGES - TEX. TRANS. CODE §708.158.**

Note: These forms are intended only as an example and guide for drafting.<sup>1</sup> Please seek the help of an attorney.

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS

COUNTY COURT AT LAW

V.

NUMBER \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

§  
§  
§  
§  
§  
§  
§  
§

**MOTION TO WAIVE SURCHARGES**

NOW COMES \_\_\_\_\_, Defendant, who brings this Motion to Waive Surcharges assessed pursuant to Texas Transportation Code §708.158. In support, thereof, defendant would respectfully show the court the following:

\_\_\_\_\_ (1) Defendant's income or household income does not exceed 125% of the applicable income level established by the federal poverty guidelines;

\_\_\_\_\_ (2) Defendant's most recent statement of wages shows Defendant's income or household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines; OR

\_\_\_\_\_ (3) a federal agency, state agency, or school district has declared Defendant eligible for

- (A) the food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;
- (B) the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. § 1786;
- (C) the medical assistance program under Chapter 32, Human Resources Code;
- (D) the child health plan program under Chapter 62, Health and Safety Code; or
- (E) the national free or reduced-price lunch program established under 42 U.S.C. § 1751 *et seq.*

Because the Defendant meets one or more of the above qualifications for indigency, the defendant is unable to pay the surcharges imposed under Texas Transportation Code §708.158.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that that all of the surcharges assessed by the Texas Department of Public Safety under Chapter 708 of the Texas Transportation Code

<sup>1</sup>Visit your county local law library for other styles of forms. For a list of all county law libraries in Texas, click [here](#).

be waived in their entirety, and that the Defendant be discharged from any further financial responsibility to pay any surcharges imposed in connection with this Cause.

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Attorney/Petitioner *pro se*)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (phone number)

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS

§  
§  
§  
§  
§  
§

COUNTY COURT AT LAW

V.

NUMBER \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, TEXAS

**ORDER WAIVING SURCHARGES**

On \_\_\_\_\_, Defendant's Motion to Waive All Surcharges pursuant to Texas Transportation Code § 708.158, was considered by the court.

The Court FINDS that:

\_\_\_\_\_ (1) Defendant's income or household income does not exceed 125% of the applicable income level established by the federal poverty guidelines;

\_\_\_\_\_ (2) Defendant's most recent statement of wages shows Defendant's income or household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines; OR

\_\_\_\_\_ (3) a federal agency, state agency, or school district has declared Defendant eligible for

(A) the food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;

(B) the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. § 1786;

(C) the medical assistance program under Chapter 32, Human Resources Code;

(D) the child health plan program under Chapter 62, Health and Safety Code; or

(E) the national free or reduced-price lunch program established under 42 U.S.C. §1751 *et seq.*

Based on the foregoing, the Court FINDS that the Defendant is indigent. IT IS THEREFORE ORDERED that the Texas Department of Public Safety shall waive all surcharges assessed under Chapter 708 of the Texas Transportation Code in connection with this Cause.

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding



## AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE OR VOLUNTARY CAREGIVER

August 2011  
Page 1 of 4

This authorization agreement is made in conformance with Chapter 34 of the Texas Family Code concerning the following Child:

Child's Full Name:
Date of Birth:

Parent completing this form:

Full Name:
Physical Address:
Telephone Number:
Other contact information:

Child's other parent:

Full Name:
Physical Address:
Telephone Number:
Other contact information:

Parent voluntarily authorizes the following relative or Parental Child Safety Placement voluntary caregiver to make certain decisions regarding the child, as listed on the next page of this authorization agreement.

Name:
Relationship to Child (check one): Child's Grandparent <input type="checkbox"/> Child's Adult Sibling <input type="checkbox"/> Child's Aunt or Uncle <input type="checkbox"/> Parental Child Safety Placement Voluntary Caregiver in accordance with Child Protective Services <input type="checkbox"/>
Physical Address:
Telephone Number:
Other contact information:

PARENT AND RELATIVE OR VOLUNTARY CAREGIVER UNDERSTAND THAT THEY ARE  
REQUIRED BY LAW TO IMMEDIATELY PROVIDE EACH OTHER WITH INFORMATION  
REGARDING ANY CHANGE IN THE OTHER PARTY'S ADDRESS OR CONTACT  
INFORMATION.



# AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE OR VOLUNTARY CAREGIVER

August 2011  
Page 2 of 4

Parent authorizes the above named relative or voluntary caregiver to perform the following acts in regard to the child and the relative or voluntary caregiver assumes the responsibility of performing these functions:

- (1) To authorize medical, dental, psychological, surgical treatment, and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;
- (2) To obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;
- (3) To enroll the child in a day-care program or public or private preschool, primary or secondary school;
- (4) To authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities;
- (5) To authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;
- (6) To authorize employment of the child; and
- (7) To apply for and receive public benefits on behalf of the child.
- (8) This authorization agreement does not confer on the relative or voluntary caregiver of the child the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child

To the best of the parent's and the relative's or voluntary caregiver's knowledge (check if applicable):

This child is not the subject of a current (pre-existing) valid authorization agreement, and no parent, guardian, custodian, licensed child-placing agency or other agency makes any claim to actual physical possession or care, custody or control of the child that is inconsistent with this authorization agreement.

To the best of the parent's and the relative's or voluntary caregiver's knowledge (choose one from below):

**THERE IS NO COURT INVOLVEMENT WITH THIS CHILD**

All of the following statements must apply:

- There is no court order or pending suit affecting the parent-child relationship concerning the child.
- There is no pending litigation in any court concerning custody, possession, or placement of the child or access to or visitation with the child.
- The court does not have continuing jurisdiction concerning the child.

**THIS CHILD HAS BEEN THE SUBJECT OF A COURT ACTION**

The court with continuing jurisdiction concerning the child has given written approval for the execution of the authorization agreement accompanied by the following information:

- The county in which the court is located;
- The number of the court; and
- The cause number in which the order was issued or the litigation is pending.

*Please staple a copy of the court's order to this agreement.*





## AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE OR VOLUNTARY CAREGIVER

August 2011  
Page 3 of 4

### WARNINGS AND DISCLOSURES

This authorization agreement is an important legal document. The parent and the relative or voluntary caregiver must read all of the warnings and disclosures before signing this authorization agreement.

The parent and relative are not required to consult an attorney but are advised to do so.

A parent's rights as a parent may be adversely affected by placing or leaving the parent's child with another person.

This authorization agreement does not confer on the relative or voluntary caregiver the rights of a managing or possessory conservator or legal guardian.

A parent who is a party to this authorization agreement may terminate the authorization agreement and resume custody, possession, care, and control of the child on demand and at any time the parent may request the return of the child.

Failure by the relative or voluntary caregiver to return the child to the parent immediately on request may have criminal and civil consequences.

Under other applicable law, the relative or voluntary caregiver may be liable for certain expenses relating to the child in the relative's or voluntary caregiver's care, but the parent still retains the parental obligation to support the child.

In certain circumstances, this authorization agreement may not be entered into without written permission of the court. Examples of when court permission must be granted include when a court has entered a previous order granting custody or establishing a child support obligation.

This authorization agreement may be terminated by certain court orders affecting the child.

This authorization agreement does not supersede, invalidate, or terminate any prior authorization agreement regarding the child.

This authorization agreement is void if a prior authorization agreement regarding the child is in effect and has not expired or been terminated.

### MAILING REQUIREMENTS:

When both parents do not sign the parent authorization agreement, a copy of the agreement **MUST** be mailed to the non-signing parent, unless that parent is deceased or has had his or her parental rights terminated. This authorization agreement is **void** unless:

1. The parties mail a copy of this agreement to a non-signing parent **not later than the 10th day** after the date the authorization agreement is signed, **by certified or international registered mail**, as applicable, **return receipt requested**.
2. If the parties do not receive a response from the non-signing parent before the 20th day after the date the copy of the agreement is mailed, the parties must mail a second copy of the agreement **by first class mail or International first class mail**, as applicable, to the parent **not later than the 45th day** after the date the authorization agreement is signed.

### EXCEPTION TO MAILING REQUIREMENTS:

If a parent who did not sign the authorization agreement **does not have court-ordered possession of or access to the child who is the subject of the agreement**, the parent who is a party to the agreement does not have to mail a copy of the agreement to the non-signing parent if either of the following circumstances applies:

1. A protective order has been issued against the non-signing parent as provided under Chapter 85 of the Texas Family Code or under a similar law of another state for committing an act of family violence (as defined by Section 71.004 of the Texas Family Code) against the parent



# AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE OR VOLUNTARY CAREGIVER

- who signed the agreement or any child of the parent who signed the agreement; or
2. The non-signing parent has been convicted of any of the following criminal offenses against the parent who signed the agreement or any child of the parent who signed the agreement:
    - o any offense under Title 5 of the Texas Penal Code (including murder, homicide, kidnapping, assault and sexual assault); or
    - o any other criminal offense in Texas or any other state if the offense involves a violent act or prohibited sexual conduct.

This authorization agreement (select one of the following two):

- Expires on this date: \_\_\_\_\_ OR  
 Is valid until revoked in writing by either party

In addition, check here if you want the agreement to continue in effect after your death or during any period of incapacity.

Execution of a subsequent authorization agreement does not by itself supersede, invalidate, or terminate a prior authorization agreement.

By signing below, parent and the relative or voluntary caregiver acknowledge that they have each read this authorization agreement carefully, are entering into the authorization agreement voluntarily, and have read and understand all of the Warnings and Disclosures included in this authorization agreement.

<p>_____  <b>PARENT</b>          Printed name:</p> <p>SUBSCRIBED AND ACKNOWLEDGED BEFORE ME on this ____ day of _____, 20____.</p> <p style="text-align: center;">_____          Notary Public in and for the State of TEXAS</p>
<p>_____  <b>PARENT**</b>          Printed name:</p> <p>SUBSCRIBED AND ACKNOWLEDGED BEFDRE ME on this ____ day of _____, 20____.</p> <p style="text-align: center;">_____          Notary Public in and for the State of TEXAS</p>
<p>_____  <b>RELATIVE OR VDLUNTARY CAREGIVER</b>          Printed name:</p> <p>SUBSCRIBED AND ACKNOWLEDGED BEFDRE ME on this ____ day of _____, 20____.</p> <p style="text-align: center;">_____          Notary Public in and for the State of TEXAS</p>

## Instructions for Requesting a Child Support Modification

### READ THIS PAGE CAREFULLY BEFORE YOU FILL OUT THE FORMS.

#### Page 1: INSTRUCTIONS (*this page*)

- The attached forms must be completed and signed in the presence of the unit Access to Courts Supervisor.
- All sections of the attached forms must be filled out correctly. (*Print neatly and in black or blue ink.*)
- Incomplete sections or information that cannot be read will slow the processing of your request.
- Using the return envelope that was provided, mail the completed, signed documents back to the Office of the Attorney General, Child Support Division.

#### Page 2: REQUEST FOR MODIFICATION

- On page 2, you must **CHECK ONLY ONE BOX**. *★If you check more than one box, it will slow down the processing of your request.*
- At the bottom of page 2, you will need to carefully read and initial each of the six statements.
- **DO NOT FORGET** to sign and date page 2, in the presence of the unit Access to Courts Supervisor  
*★Your request will not be processed if you do not sign page 2.*

#### Pages 3 and 4: AFFIDAVIT OF INCOME AND ASSETS

- **ALL BOXES MUST BE FILLED IN.**
- If you do not know the requested information, write "**Unknown**."
- If the box is asking for information that does not apply to you, write "N/A" or "not applicable."  
○ *For example, in Section 6 if you do not have a savings account, you can write "N/A."*

**SECTION 1: YOUR INFORMATION & CONTACT PERSON UPON RELEASE** – Provide as much information as possible and information for a person who will know how to forward mail to you after release.

**SECTION 2: RELEASE INFORMATION & PAROLE OFFICER** – Provide correct information for when you will be released, paroled, if you will be parole and your parole officer information if known.

**SECTION 3: INFORMATION ABOUT YOUR CHILDREN** – Provide information about **all** your children. The court will use this information when considering your request for modification.

**SECTION 4: PLEASE LIST ALL CHILD SUPPORT ORDERS** – List **all** court ordered child support that you are supposed to be paying. Remember to include court orders from other states too.

**SECTION 5: EMPLOYMENT AND EARNINGS INFORMATION** – Provide as much information as possible.

- List your last three employers with the salary or monthly payments you received for each employer.
- Include self-employment payments, retirement payments, social security payments, and veterans' benefits.
- Include any other income, such as rental payments paid to you or investment earnings.

**SECTION 6: SAVINGS AND ASSET INFORMATION** – Provide as much information as possible.

- List all checking, savings, or retirement accounts you have and the balance of each amount.
- List all, homes, apartments, or other property that you may own and their estimated value.
- List each vehicle you own and its estimated value.
- List any other assets that you have: like stocks, investment accounts, etc.

**Remember:** You must complete and sign the forms (page two and four) in the presence of the unit Access to Courts Supervisor. Upon completion, the Access to Courts Supervisor will place the two documents, in the provided return envelope, and provide you with a stamp for immediate mailing.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT  
CHILD SUPPORT DIVISION

## Request to Modify or Lower Your Child Support

If you want the court to consider lowering the amount of your child support while you are incarcerated, read, complete and mail all parts of the forms to the Office of the Attorney General Child Support Division.

Please read the following choices carefully. Check the box that matches you and check only one box.

- I **CANNOT PAY** my child support order while I'm incarcerated. I have no contact or relationship with custodial parent (CP) and the CP may disagree to lower the current child support amount.
- I **CANNOT PAY** my child support order while I am incarcerated. I have a good relationship with the custodial parent (CP) and the CP may agree to lower the current child support amount.

Please read carefully and initial next to each statement.

- \_\_\_\_\_ I understand that completing and submitting these forms **DOES NOT** guarantee that my child support will be lowered: The submitted forms serve only as a request to review my child support case for modification.
- \_\_\_\_\_ I understand that I cannot appear in court due to my incarceration, and that the notarized Affidavit of Income and Asset and other attached forms will be submitted into court evidence.
- \_\_\_\_\_ I understand that if my request for a modification is granted, my current child support obligation may be lowered.
- \_\_\_\_\_ I understand that I must contact the Attorney General's Office Child Support Division within 30 days after my release from prison.
- \_\_\_\_\_ I understand that I must submit along with my modification application a copy of my TDCJ ID card and sentence sheet that verifies my incarceration.
- \_\_\_\_\_ I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Print Name: \_\_\_\_\_ Social Security No.: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**  
 CHILD SUPPORT DIVISION

**Incarcerated Noncustodial Parent Affidavit of Income/Asset**  
*It is important that you complete every section of this form.*

**Section 1: Information About Yourself & Contact Person Upon Release**

Name (last, first, middle)		TDJC No.		
Facility Name	Mailing Address:	City	State	Zip Code
Name: (Person you will live with when released)	Relationship		Phone number	
Street Address	City	State	Zip Code	

**Section 2: Release Information and Parole Officer**

Date of Incarceration	Parole Eligibility Date	Project Release Date
Date of Birth	Parole upon release? <input type="checkbox"/> Yes, how long _____ <input type="checkbox"/> No, stop proceed to Section 3	Transition Ct or Halfway House <input type="checkbox"/> Yes, where _____ <input type="checkbox"/> No
Parole Officer (Name if known)	Parole Office Address	City of Parole Office

**Section 3: Information About Your Children:**

*(List all biological children or legally adopted you have. If you don't know certain information put "unknown".)*

Child's Name (Last, First, Middle)	Sex	Date or Year of Birth	Place of Birth	Other Parents Name

**Section 4: Please List All of Your Child Support Cases:**

*(This includes court ordered active and pending child support cases you have. If you need additional space write on the back)*

OAG Case ID #	Child Support Amount	Number of Children	County, State
0001234567	<b>Example:</b> \$245.00 per month	2	Travis, TX



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**  
 CHILD SUPPORT DIVISION

**Section 5: Employment and Earnings Information**

Provide information about your job history and other income history do not leave anything blank.

Employer	Started	Left Job	Pay Prior to Incarceration	Current Status of Income
<b>Example:</b> <i>Corner Z Gas Station</i>	<i>12 / 2001</i>	<i>5 / 2002</i>	<i>\$1,000 a month</i>	<i>\$0</i>
Self Employment				
Retirement Pay Received				
Social Security Disability/Veterans Benefits Received				
Other income:				
<b>Total Monthly Income</b>				

**Section 6: Savings and Asset Information**

Provide information about your assets (property that has any value) if none fill in with zero (\$0).

Type of Asset	Value Prior to Incarceration (Amount)	Current Value (Amount)
<b>Example:</b> <i>Savings Account – Capital Bank</i>	<i>\$100.00</i>	<i>\$0</i>
Checking Account		
Savings Account		
Retirement or Pensions Funds		
Property/Real Estate		
Vehicles (car, boat, motorcycle)		
Other Assets:		
<b>Total Value Of All Assets</b>		

All of the information and facts contained in this Affidavit of Income and Asset are true and correct to the best of my knowledge and belief.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The State of Texas

County of \_\_\_\_\_

Sworn to and subscribed before me on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_

Notary Public's Signature: \_\_\_\_\_



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

CHILD SUPPORT DIVISION

Dear Parent:

Re: Your Request for Review

Thank you for your inquiry regarding a review of your child support order. Please sign this form and return it with the completed Child Support Review Questionnaire to the child support office that is handling your case. You can find the address by calling 1-800-252-8014, or selecting "Child Support Interactive" from the child support section of the Attorney General's Web site at www.texasattorneygeneral.gov.

Name:	Social Security #:	OAG Case #:
-------	--------------------	-------------

I request the Child Support Division of the Office of the Attorney General to conduct a review of my child support order. I understand the following:

- § The attorneys of the Office of the Attorney General represent the State of Texas. They will provide me with child support services, but do not represent me or any other individual.
- § A review addresses only child support and medical support.
- § The non-custodial parent may be required to provide medical insurance for the child(ren).
- § A review of a child support order will determine if the order complies with the Texas child support guidelines.
- § A request for a review may be withdrawn by the requestor.

Please list the reason you are requesting a review:

Signature

Date Signed

Within three weeks of receiving all of the necessary information from you, we will determine if a review of your child support order is appropriate and we will notify you of our decision. If it is determined that a review should be conducted, the other party named in your child support order will be asked to complete a questionnaire. Thank you for your cooperation.

Office of the Attorney General  
Child Support Division



OFFICE OF THE ATTORNEY GENERAL  
STATE OF TEXAS

CHILD SUPPORT DIVISION

GREG ABBOTT

Attorney General

**CHILD SUPPORT REVIEW QUESTIONNAIRE**

**INSTRUCTIONS**

Please type, print, or write clearly. Answer all questions as completely and accurately as you can.  
Please return the completed form along with copies of your:

- \$ income tax returns for the past two years
- \$ two most recent payroll stubs

If you do not have these items, please send us your W-2 Forms for the past two years.

Date:	OAG Case Number:
-------	------------------

**INFORMATION ABOUT YOU (Please Print All Information)**

Name (Last, First, Middle)		Social Security No. - -		Date of Birth		Relationship to Child(ren)		
Address: Street Address			Apt. #		City		State      Zip Code	
Home Telephone No. ( ) -			Work Telephone No. ( ) -		Do you have custody of the child(ren)? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Employer					Employer=s Telephone No. ( ) - ext			
Employer Address: Street Address				City		State      Zip Code		

**INFORMATION ABOUT THE OTHER PARTY**

Name (Last, First, Middle)		Social Security No. - -		Date of Birth		Relationship to Child(ren)		
Address: Street Address			Apt. #		City		State      Zip Code	
Current Employer				Employer=s Telephone No. ( ) -		Home Telephone No. ( ) -		
Employer Address: Street Address				City		State      Zip Code		

**INFORMATION ABOUT THE CHILD(REN) (List only your children with the other party named above.)**

Name (Last, First, Middle)	Sex	Social Security Number	Date of Birth	Place of Birth
	F	- -		
	F	- -		
	F	- -		
	F	- -		
	F	- -		



**FINANCIAL INFORMATION**

	CURRENT INFORMATION	INFORMATION AT TIME OF LAST SUPPORT ORDER
<b>YOUR GROSS (before any deductions) MONTHLY INCOME FROM:</b>	<b>AMOUNT</b>	<b>AMOUNT</b>
Salary and Wages (including commissions, bonuses, and overtime)		
Self-Employment		
Pensions and Retirement		
Social Security Benefits		
Unemployment Benefits		
Disability and Workers= Compensation Benefits		
Dividends and Interest		
Net Rentals		
Other (specify):		
<b>TOTAL MONTHLY INCOME</b>		

	CURRENT INFORMATION	INFORMATION AT TIME OF LAST SUPPORT ORDER																					
<b>YOUR MONTHLY DEDUCTIONS FOR:</b>	<b>AMOUNT</b>	<b>AMOUNT</b>																					
Union Dues																							
Health Insurance You Pay For Your Child(ren) On This Order																							
<table border="1"> <thead> <tr> <th>Insurance Company</th> <th>Policy Number</th> <th>Child(ren) Covered</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	Insurance Company	Policy Number	Child(ren) Covered																				
Insurance Company	Policy Number	Child(ren) Covered																					
<b>TOTAL MONTHLY DEDUCTIONS</b>																							

	CURRENT INFORMATION	INFORMATION AT TIME OF LAST SUPPORT ORDER
<b>YOUR ASSETS:</b>	<b>AMOUNT</b>	<b>AMOUNT</b>
Cash On Hand		
Money in Checking Accounts		
Money in Savings Accounts		
Money in Any Other Accounts		
Retirement or Pension Funds		
Life Insurance Cash Value		
Stocks, Bonds, or Other Investment Securities		
Real Estate		
Other Assets (please specify)		
<b>TOTAL VALUE OF ALL ASSETS</b>		

	CURRENT INFORMATION	INFORMATION AT TIME OF LAST SUPPORT ORDER
<b>CHILDREN:</b>	<b>NUMBER</b>	<b>NUMBER</b>
Children you are legally obligated to support either in you home or by court order.		

Read the statements below. Check the box next to those you believe are true, and explain why.

The other parent=s income has substantially (check one)  increased  decreased since the date of the current child support order.

By how much? \$ \_\_\_\_\_ per Hour

Explain why \_\_\_\_\_

Do you have any other children, not already mentioned in this questionnaire, **who currently live with you?**

Yes  No If Ayes@, complete the box below. Do **not** include stepchildren.

Name (Last, First, Middle)	Sex	Social Security #	Date of Birth	Place of Birth
	F	- -		
	F	- -		

Do you have any other children, not already mentioned in this questionnaire, **whom you are legally obligated to support?**

Yes  No If Ayes@, complete the box below. Please attach copies of your court orders, if available.

Name (Last, First, Middle)	Sex	Social Security #	Date of Birth	Place of Birth
	F	- -		
	F	- -		

Is there any other information we should consider that has not been covered in this questionnaire? For example; Special needs of the children subject to this order.

Explain \_\_\_\_\_

By my signature below, I certify that the information provided by me in this form is true and correct to the best of my knowledge.

**Texas Government Code ' 559 gives you the right to review and request correction of information on this form.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

**APPENDIX O: PETITION AND ORDER TO MODIFY CHILD SUPPORT**

Note: These forms are intended only as an example and guide for drafting.<sup>31</sup> Please seek the help of an attorney.

**CAUSE NO.** \_\_\_\_\_

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
1. _____	§	
2. _____	§	_____ JUDICIAL DISTRICT
3. _____	§	
4. _____,	§	
CHILDREN	§	_____ COUNTY, TEXAS

**PETITION TO MODIFY IN SUIT AFFECTING PARENT-CHILD RELATIONSHIP - CHILD SUPPORT**

1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. *Parties and Order to Be Modified*

This suit to modify a prior order is brought by \_\_\_\_\_, Petitioner.

The last three numbers of \_\_\_\_\_'s driver's license number are \_\_\_\_\_. The last three numbers of \_\_\_\_\_'s Social Security number are \_\_\_\_\_.

Petitioner is the father/mother of the children and has standing to bring this suit. The requested modification will be in the best interest of the children.

Respondent is the father/mother of the children subject to this modification.

The order to be modified is entitled Order in Suit Affecting Parent Child Relationship and was rendered on \_\_\_\_\_.

3. *Jurisdiction*

This Court has continuing, exclusive jurisdiction of this suit.

4. *Children*

The following children are the subject of this suit:

Name: \_\_\_\_\_  
Sex: Male/Female  
Birth date: \_\_\_\_\_

<sup>31</sup>Visit your county local law library for other styles of forms. For a list of all county law libraries in Texas, click [here](#).

Name: \_\_\_\_\_  
Sex: Male/Female  
Birth date: \_\_\_\_\_

Name: \_\_\_\_\_  
Sex: Male/Female  
Birth date: \_\_\_\_\_

All children reside in \_\_\_\_\_ County, Texas.

5. *Parties Affected*

The following parties may be affected by this suit:

Name: \_\_\_\_\_  
Relationship: mother/father/other

Process should be served at \_\_\_\_\_

6. *Health Insurance Information*

The children are/are not covered under private insurance/Medicaid/Other.

7. *Children's Property*

There has been no change of consequence in the status of the children's property since the prior order was rendered.

8. *Support*

The circumstances of the Petitioner have materially and substantially changed since the date of the rendition of the order to be modified, and the support payments previously ordered should be decreased. Petitioner requests that any decrease be made retroactive. The requested modification is in the best interest of the children.

9. *Prayer*

Petitioner prays that citation and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition. Petitioner prays for general relief.

Respectfully submitted,

\_\_\_\_\_  
Name  
Address: \_\_\_\_\_

Tel. \_\_\_\_\_

*Petitioner Pro Se*

CAUSE NO. \_\_\_\_\_

IN THE INTEREST OF

- 1. \_\_\_\_\_
  - 2. \_\_\_\_\_
  - 3. \_\_\_\_\_
  - 4. \_\_\_\_\_,
- CHILDREN

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_ COUNTY, TEXAS

**ORDER IN SUIT TO MODIFY PARENT-CHILD RELATIONSHIP – CHILD SUPPORT**

On \_\_\_\_\_ the Court heard this case.

*Appearances*

Petitioner, \_\_\_\_\_, appeared in person and announced ready for trial.

Respondent, \_\_\_\_\_, appeared in person and announced ready for trial.

*Jurisdiction*

The Court, after examining the record and the evidence and argument of counsel, finds that it has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case. All persons entitled to citation were properly cited.

*Jury*

A jury was waived, and all questions of fact and of law were submitted to the Court.

*Record*

The making of a record of testimony was waived by the parties with the consent of the Court.

*Children*

The Court finds that the following children are the subject of this suit:

Name: \_\_\_\_\_  
 Sex: Male/Female  
 Birth date: \_\_\_\_\_

Name: \_\_\_\_\_  
 Sex: Male/Female  
 Birth date: \_\_\_\_\_

Name: \_\_\_\_\_  
 Sex: Male/Female  
 Birth date: \_\_\_\_\_

*Findings*

The Court finds that the material allegations in the petition to modify are true and that the requested modification is in the best interest of the children. IT IS ORDERED that the requested modification is GRANTED.

*Best Interest of the Children*

The Court finds that the following orders are in the best interest of the children.

*Child Support*

IT IS ORDERED that \_\_\_\_\_ is obligated to pay and shall pay to \_\_\_\_\_ child support of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per month, with the first payment being due and payable on \_\_\_\_\_ and a like payment being due and payable on the \_\_\_\_\_ day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

1. any child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;
2. any child marries;
3. any child dies;
4. the parent-child relationship is terminated based on genetic testing that excludes the obligor as the child's genetic father;
5. the child enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or
6. any child's disabilities are otherwise removed for general purposes.

If the child is eighteen years of age and has not graduated from high school, IT IS ORDERED that \_\_\_\_\_'s obligation to pay child support to \_\_\_\_\_ shall not terminate but shall continue for as long as the child is enrolled-

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or

2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.

Statement on Guidelines

In accordance with Texas Family Code section 154.130, the Court makes the following findings and conclusions regarding the child support order made in open court in this case.

1. The net resources of \_\_\_\_\_ per month are \$\_\_\_\_\_.
2. The net resources of \_\_\_\_\_ per month are \$\_\_\_\_\_.
3. The percentage applied to the first \$7,500 of \_\_\_\_\_'s net resources for child support is \_\_\_\_\_ percent.

Payment

IT IS ORDERED that all payments shall be made through the state disbursement unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to \_\_\_\_\_ for the support of the children.

Change of Employment

IT IS FURTHER ORDERED that \_\_\_\_\_ shall notify this Court and \_\_\_\_\_ by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment within seven days after the change of address or the termination of employment.

*Required Information*

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: \_\_\_\_\_  
Social Security number: XXX-XX- X \_\_\_\_\_  
TX Driver's license number: \_\_\_\_\_  
Current residence address: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
Telephone \_\_\_\_\_  
Name of employer: \_\_\_\_\_  
Address of employment: \_\_\_\_\_

Name: \_\_\_\_\_  
Social Security number: XXX-XX- X \_\_\_\_\_  
TX Driver's license number: \_\_\_\_\_  
Current residence address: \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
Telephone \_\_\_\_\_  
Name of employer: \_\_\_\_\_  
Address of employment: \_\_\_\_\_

*Required Notices*

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO

PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at \_\_\_\_\_. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MC046S, P.O. Box 12017, Austin, Texas 78711-2017.

#### *Warnings*

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

#### *Costs*

IT IS ORDERED that costs of court are to be borne by the party who incurred them.

#### *Relief Not Granted*



IT IS ORDERED that all relief requested in this case and not expressly granted is denied. All other terms of the prior orders not specifically modified in this order shall remain in full force and effect.

*Date of Order*

SIGNED on \_\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

## INSTRUCTIONS

### For filling out the "Request for Status Information Letter"

#### SECTION 1:

- Name: you must provide your complete name, and any other names you have ever used. If you have more than one last name, you must provide both names.
- Address: you must include your complete mailing address. Forms received without a mailing address will not be processed.
- Social Security Number: If you have a Social Security Number, you must provide it. Also, if you have ever used a different Social Security Account Number, provide that as well.
- Date of Birth: This form is only for men born after December 31, 1959, who are 26 years old or older. You must provide your complete date of birth.
- Daytime Telephone Number: If possible, provide a telephone number where you can be reached during the day, in case we need to contact you.
- E-mail Address: If possible, provide your e-mail address in case we need to contact you.

#### SECTION 2:

This section is for explaining and documenting why you did not register with Selective Service. This section consists of five different parts. You must complete and submit documentation for any and all parts that apply to you.

- Military: To obtain proof of military service (DD-214, Official Military Personnel File) write to: National Personnel Records Center, GSA, Military Personnel Records Center, 9700 Page Blvd., St. Louis, MO, 63132. Or visit <http://www.archives.gov/veterans/military-service-records>
- Incarcerated, institutionalized, hospitalized, or confined to home: for each instance, provide type of confinement, dates of confinement, and supporting documentation.

#### Non Citizen / Alien:

- If you entered the United States for the first time after your 26th birthday, you must provide documentation to support your claim. Valid documentation includes: entry stamp in your passport, I-94 with entry stamp on it, or a letter from the Bureau of U.S. Citizenship and Immigration Services (USCIS) indicating the date you entered the United States. If you entered the United States illegally after your 26th birthday, you must provide proof that you were not living in the United States from age 18 to age 26. Please note: your Resident Alien Card (Green Card) is not valid as proof of entry to the United States.
- If you entered the United States as a valid non-immigrant alien, and remained in that status to your 26th birthday, you must provide documentation to support your claim. For example, if you entered the United States as an F-1 Student, and remained in that status until your 26th birthday, you would need to provide documentation indicating that you were admitted on an F-1 visa and attended school full-time as required. (Acceptable documents for this situation include copies of your I-20's or a letter from the school you attended indicating your full time attendance as a non-immigrant alien). The same thing applies for all non-immigrant statuses. You must explain, if at any point, you violated the terms of your visa, or overstayed your visa and became an undocumented alien.
- You should provide as much information as possible. We will use the information you provide to determine your registration status.
- Transsexual: For individuals who have had a sex change. You must indicate what gender you were born as, and attach documentation which indicates this as well.
- Reason why you failed to register with Selective Service upon reaching age 18 and before reaching age 26: Provide a written explanation for not registering with Selective Service.

(continued on next page)

### SECTION 3:

Sign and date the letter. Return this letter to the address listed with copies of supporting documents, showing proof and anything else you may wish to include. Do not send original documents, as they will not be returned. You should retain a copy of all documents and correspondence submitted.

### HELPFUL INFORMATION

- This form is designed to be printed for use, and cannot be completed online. After printing, complete the form, attach **ALL** supporting documentation, and mail to: Selective Service System, ATTN: SIL, PO Box 94638, Palatine, IL 60094-4638.
- This form is for use only by men born after December 31, 1959, who are not registered and are now 26 years old or older.
- This form is not a registration form, and by submitting it, you will not be registered.
- If you feel that you have already registered, verify your registration on our website ([www.sss.gov](http://www.sss.gov)), or call our Registration Information Office at (847) 688-6888 to obtain your Selective Service number.
- We will issue a Status Information Letter based on the information you provide. This letter will clarify your status with Selective Service.
- If you are being denied a right, benefit, or privilege because you are not registered, submit a **copy** of your status information letter and an explanation letter for your failure to register, to the Agency administering the right, benefit, or privilege. That Agency will make the final determination regarding your eligibility. The Selective Service System does not determine your eligibility for any right, benefit, or privilege.

August 4, 2009

## Request for Status Information Letter

I am requesting a Status Information Letter. I am a male who is not registered with Selective Service. **I am now 26 years old or older**, and was born after December 31, 1959.

### Section 1:

Name \_\_\_\_\_  
First Middle Last

List any other names used \_\_\_\_\_  
include any multiple last names

Current Mailing Address \_\_\_\_\_  
Street Address

City State Zip Code

Social Security Number \_\_\_\_\_

Date of Birth \_\_\_\_\_  
Month / Day / Year

Daytime Telephone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

### Student Financial Aid

If this request for status information letter is related to the student financial aid process, please provide the address of the school, college, university you plan to attend or are attending.

Name of School \_\_\_\_\_

Street Address \_\_\_\_\_

City/Town \_\_\_\_\_

State and Zip Code \_\_\_\_\_

Phone \_\_\_\_\_ Fax Number \_\_\_\_\_

**Section 2:**

**MILITARY:**

List dates of active duty service: \_\_\_\_\_ to \_\_\_\_\_

List dates of reserve duty service: \_\_\_\_\_ to \_\_\_\_\_

List dates of military school service: \_\_\_\_\_ to \_\_\_\_\_

Military school attended: \_\_\_\_\_

**Attach copy of DD214 (or DD Form 4 if still on active duty)**

**INCARCERATED, INSTITUTIONALIZED, HOSPITALIZED, OR CONFINED TO HOME:**

List dates during which you were (circle appropriate situation) incarcerated, institutionalized, hospitalized, or confined to home. For multiple dates, list all.

\_\_\_\_\_ to \_\_\_\_\_ , \_\_\_\_\_ to \_\_\_\_\_ , \_\_\_\_\_ to \_\_\_\_\_

**Attach proof of each instance**

**NON CITIZEN / ALIEN**

Date you entered the United States for the first time: \_\_\_\_\_  
Month / Day / Year

USCIS (Formerly INS) status at time of entry: \_\_\_\_\_

List all alien status(es) held since entering the country, and give dates:

**(Attach separate sheet if necessary)**

\_\_\_\_\_ to \_\_\_\_\_ USCIS Status: \_\_\_\_\_

\_\_\_\_\_ to \_\_\_\_\_ USCIS Status: \_\_\_\_\_

\_\_\_\_\_ to \_\_\_\_\_ USCIS Status: \_\_\_\_\_

\_\_\_\_\_ to \_\_\_\_\_ USCIS Status: \_\_\_\_\_

**Attach copies of supporting documentation (see following information sheet for detailed instructions regarding this)**

**TRANSSEXUAL:**

At birth my gender was: \_\_\_\_\_

**Attach copy of birth certificate**

**REASON WHY YOU FAILED TO REGISTER WITH SELECTIVE SERVICE UPON REACHING AGE 18 AND BEFORE REACHING AGE 26:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 3:**

Print, sign and date, then send this letter, together with ALL copies of required documents and any other supporting information you may wish to include to:

Selective Service System  
ATTN: SIL  
PO Box 94638  
Palatine, IL 60094-4638

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**No action can be taken until we receive ALL of the information/documentation needed. You should retain a copy of all documents and correspondence submitted to us. You should receive a response within 90 days.**

## General Instructions

### Who Can Use this Application

If you are a U.S. citizen who lives or has an address within the United States, you can use the application in this booklet to:

- Register to vote in your State,
- Report a change of name to your voter registration office,
- Report a change of address to your voter registration office, or
- Register with a political party.

### Exceptions

Please do not use this application if you live outside the United States and its territories and have no home (legal) address in this country, or if you are in the military stationed away from home. Use the Federal Postcard Application available to you from military bases, American embassies, or consular offices.

**New Hampshire** town and city clerks will accept this application only as a request for their own absentee voter mail-in registration form.

**North Dakota** does not have voter registration.

**Wyoming** law does not permit mail registration.

### How to Find Out If You Are Eligible to Register to Vote in Your State

Each State has its own laws about who may register and vote. Check the information under your State in the State Instructions. All States require that you be a United States citizen by birth or naturalization to register to vote in federal and State elections. Federal law makes it illegal to falsely claim U.S. citizenship to register to vote in any federal, State, or local election. You **cannot** be registered to vote in more than one place at a time.

### How to Fill Out this Application

Use both the Application Instructions and State Instructions to guide you in filling out the application.

- First, read the Application Instructions. These instructions will give you important information that applies to everyone using this application.
- Next, find your State under the State Instructions. Use these instructions to fill out Boxes 6, 7, and 8. Also refer to these instructions for information about voter eligibility and any oath required for Box 9.

### When to Register to Vote

Each State has its own deadline for registering to vote. Check the deadline for your State on the last page of this booklet.

### How to Submit Your Application

Mail your application to the address listed under your State in the State Instructions. Or, deliver the application in person to your local voter registration office. The States that are required to accept the national form will accept copies of the application printed from the computer image on regular paper stock, signed by the applicant, and mailed in an envelope with the correct postage.

### First Time Voters Who Register by Mail

If you are registering to vote for the first time in your jurisdiction and are mailing this registration application, Federal law requires you to show proof of identification the first time you vote. Proof of identification includes:

- A current and valid photo identification or
- A current utility bill, bank statement, government check, paycheck or government document that shows your name and address.

Voters may be exempt from this requirement if they submit a **COPY** of this identification with their mail in voter registration form. If you wish to submit a **COPY**, please keep the following in mind:

- Your state may have additional identification requirements which may mandate you show identification at the polling place even if you meet the Federal proof of identification.
- Do not submit original documents with this application, only **COPIES**.

### If You Were Given this Application in a State Agency or Public Office

If you have been given this application in a State agency or public office, it is your choice to use the application. If you decide to use this application to register to vote, you can fill it out and leave it with the State agency or public office. The application will be submitted for you. Or, you can take it with you to mail to the address listed under your State in the State Instructions. You also may take it with you to deliver in person to your local voter registration office.

Note: The name and location of the State agency or public office where you received the application will remain confidential. It will not appear on your application. Also, if you decide not to use this application to register to vote, that decision will remain confidential. It will not affect the service you receive from the agency or office.

# Application Instructions

Before filling out the body of the form, please answer the questions on the top of the form as to whether you are a United States citizen and whether you will be 18 years old on or before Election Day. If you answer no to either of these questions, you may not use this form to register to vote. However, state specific instructions may provide additional information on eligibility to register to vote prior to age 18.

## Box 1 — Name

Put in this box your full name in this order — Last, First, Middle. Do not use nicknames or initials.  
*Note:* If this application is for a change of name, please tell us in **Box A** (*on the bottom half of the form*) your full name before you changed it.

## Box 2 — Home Address

Put in this box your home address (legal address). Do **not** put your mailing address here if it is different from your home address. Do **not** use a post office box or rural route without a box number. Refer to state-specific instructions for rules regarding use of route numbers.

*Note:* If you were registered before *but* this is the first time you are registering from the address in Box 2, please tell us in **Box B** (*on the bottom half of the form*) the address where you were registered before. Please give us as much of the address as you can remember.

*Also Note:* If you live in a rural area but do not have a street address, or if you have no address, please show where you live using the map in **Box C** (*at the bottom of the form*).

## Box 3 — Mailing Address

If you get your mail at an address that is different from the address in Box 2, put your mailing address in this box. If you have no address in Box 2, you **must** write in Box 3 an address where you can be reached by mail.

## Box 4 — Date of Birth

Put in this box your date of birth in this order — Month, Day, Year. *Be careful not to use today's date!*

## Box 5 — Telephone Number

Most States ask for your telephone number in case there are questions about your application. However, you do **not** have to fill in this box.

## Box 6 — ID Number

Federal law requires that states collect from each registrant an identification number. You must refer to your state's specific instructions for item 6 regarding information on what number is acceptable for your state. If you have neither a drivers license nor a social security number, please indicate this on the form and a number will be assigned to you by your state.

## Box 7 — Choice of Party

In some States, you must register with a party if you want to take part in that party's primary election, caucus, or convention. To find out if your State requires this, see item 7 in the instructions under your State.

If you want to register with a party, print in the box the full name of the party of your choice.

If you do **not** want to register with a party, write "no party" or leave the box blank. Do **not** write in the word "independent" if you mean "no party," because this might be confused with the name of a political party in your State.

*Note:* If you do not register with a party, you can still vote in general elections and nonpartisan (nonparty) primary elections.

## Box 8 — Race or Ethnic Group

A few States ask for your race or ethnic group, in order to administer the Federal Voting Rights Act. To find out if your State asks for this information, see item 8 in the instructions under your State. If so, put in Box 8 the choice that best describes you from the list below:

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black, *not of* Hispanic Origin
- Hispanic
- Multi-racial
- White, *not of* Hispanic Origin
- Other

## Box 9 — Signature

Review the information in item 9 in the instructions under your State. Before you sign or make your mark, make sure that:

- (1) You meet your State's requirements, and
- (2) You understand **all** of Box 9.

Finally, sign your **full** name or make your mark, and print today's date in this order — Month, Day, Year. If the applicant is unable to sign, put in **Box D** the name, address, and telephone number (optional) of the person who helped the applicant.



Updated: 03-01-2006

## National voter registration - TEXAS

**Registration Deadline** — 30 days before the election.

**6. ID Number.** You must provide your driver's license number to register to vote. If you do not have a driver's license then you will have to provide at least the last four digits of your social security number. If you have neither, please write "NONE" on the form. A unique identifying number will instead be assigned to you by your State.

**7. Choice of Party.** You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Texas you must:

- be a citizen of the United States
  
- be a resident of the county in which the application for registration is made
- be at least 17 years and 10 months old (you must be 18 to vote)
- not be finally convicted of a felony, or if a convicted felon, you must have fully discharged your punishment, including any incarceration, parole, supervision, period of probation or be pardoned.
- have not been declared mentally incompetent by final judgment of a court of law

**Mailing address:**

Office of the Secretary of State Elections Division P.O. Box 12060 Austin, TX 78711-2060

# Voter Registration Application

**Before completing this form, review the General, Application, and State specific instructions.**

Are you a citizen of the United States of America? <input type="checkbox"/> Yes <input type="checkbox"/> No Will you be 18 years old on or before election day? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)		This space for office use only.				
<b>1</b>	(Circle one) Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV	
<b>2</b>	Home Address		Apt. or Lot #	City/Town	State	Zip Code
<b>3</b>	Address Where You Get Your Mail If Different From Above			City/Town	State	Zip Code
<b>4</b>	Date of Birth  Month Day Year		<b>5</b>	Telephone Number (optional)		<b>6</b>
<b>7</b>	Choice of Party <small>(see item 7 in the instructions for your State)</small>		<b>8</b>	Race or Ethnic Group <small>(see item 8 in the instructions for your State)</small>		
<b>9</b>	I have reviewed my state's instructions and I swear/affirm that: <input type="checkbox"/> I am a United States citizen <input type="checkbox"/> I meet the eligibility requirements of my state and subscribe to any oath required. <input type="checkbox"/> The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.			_____ Please sign full name (or put mark) ▲  Date: _____ Month Day Year		

If you are registering to vote for the first time: please refer to the application instructions for information on submitting copies of valid identification documents with this form.

## **Please fill out the sections below if they apply to you.**

If this application is for a **change of name**, what was your name before you changed it?

<b>A</b>	Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV
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If you were registered before but this is the first time you are registering from the address in Box 2, what was your address where you were registered before?

<b>8</b>	Street (or route and box number)	Apt. or Lot #	City/Town/County	State	Zip Code
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If you live in a rural area but do not have a street number, or if you have no address, please show on the map where you live.

<b>C</b>	<ul style="list-style-type: none"> <li>■ Write in the names of the crossroads (or streets) nearest to where you live.</li> <li>■ Draw an X to show where you live.</li> <li>■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.</li> </ul>	<b>NORTH</b> ↑										
	<table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Example</td> <td style="padding: 5px;">Route #2</td> <td style="padding: 5px;">● Grocery Store</td> </tr> <tr> <td style="padding: 5px;">Public School ●</td> <td style="padding: 5px;"></td> <td style="padding: 5px;">Woodchuck Road</td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;"></td> <td style="padding: 5px; text-align: center;">X</td> </tr> </table>	Example	Route #2	● Grocery Store	Public School ●		Woodchuck Road			X		
Example	Route #2	● Grocery Store										
Public School ●		Woodchuck Road										
		X										

If the applicant is unable to sign, who helped the applicant fill out this application? Give name, address and phone number (phone number optional).

<b>D</b>	
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**Mail this application to the address provided for your State.**