



**Kathy Mitchell**

Cell: (512) 695-4670

Work: (512) 441-8123, ext. 105

kmitchell@TexasCJC.org

www.TexasCJC.org

**INTERIM TESTIMONY 2016**

**House Committee on Government Transparency & Operation**

Dear Members of the Committee,

My name is Kathy Mitchell. I present today on behalf of the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on the dissemination of bulk criminal records.

### **WIDESPREAD DISSEMINATION OF CRIMINAL RECORDS HARMS THE WORKFORCE AND TEXAS FAMILIES**

Open access to criminal records through government repositories and commercial vendors, combined with the rise of the Internet and the emergence of electronic databases, has enabled more than 40 million criminal background checks to be performed annually for non-criminal justice purposes.<sup>1</sup>

As a result of this online expansion, individuals across Texas are frequently denied employment and housing based on criminal records that have been sold and published online—some of which *never* resulted in a conviction, and some of which are *completely inaccurate* and unfairly punish those who never committed a crime. Not only do these individuals suffer as a result of inadequate policies that regulate the storage and dissemination of criminal records, but our workforce and families suffer as well.

The widespread commercial publication of criminal records before a disposition is entered, as well as the long-lasting nature of data housed online, effectively prevents thousands of individuals from obtaining or keeping jobs and housing. **In order to allow individuals to give back to their communities and families in ways that enhance public safety, Texas must reform its laws related to the dissemination of criminal records.**

### **KEY FINDINGS**

- **In Texas, nearly 12 million individuals are included in the state criminal history records.**<sup>2</sup> These criminal history records are made up of arrests and subsequent dispositions, including those who were arrested but not convicted, those who have completed their sentences, those who have shown stability and established themselves in their communities, and those who are desperately trying to support themselves and their families while facing the many obstacles that automatically accompany any kind of criminal record.
- **Employers and housing providers often rely on inaccurate or incomplete criminal records.** The Texas Department of Public Safety reported in January 2016 that only 78% of Texas adult arrests in 2014 had a reported disposition.<sup>3</sup> In other words, **approximately 1 in 5 of all Texas criminal records do not include final dispositions**. The inaccuracies that can result from disseminating records without final dispositions have allowed individuals to be denied employment and housing even without a criminal conviction. Additionally, even if certain records are ordered sealed or expunged, there is no guarantee that third-party commercial vendors will purge the information from their systems or that the event will be erased from media archives,<sup>4</sup> creating additional challenges for system-involved individuals seeking employment and housing.
- **Multiple public agencies across Texas jurisdictions participate in disseminating criminal records to private entities in response to public information requests.** These include, but may not be limited to:
  - » County and district clerks, and clerks in justice or municipal courts
  - » Law enforcement agencies
  - » Texas Department of Public Safety (DPS)
  - » Community Justice Assistance Division, a division of the Texas Department of Criminal Justice (TDCJ)

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

### COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **Give jurisdictions the option to either (1) redirect to the Department of Public Safety (DPS) all requests for bulk criminal records concerning Class A and B misdemeanor and felony offenses for which a final disposition has been rendered, or (2) adopt rules to ensure that updates are provided within 30 days of any change for records that are released in bulk.** Currently, multiple agencies and jurisdictions disseminate criminal records to private entities. However, there are no standardized systems or procedures for releasing or providing updates to criminal records. In order to better steward the sensitive information that impacts millions of lives, Texas should require that DPS be the sole agency that can disseminate criminal records in bulk for all disposed offenses except Class C misdemeanors, or require that local jurisdictions implement the same rules that DPS follows to ensure long-term accuracy of criminal records released in bulk.
- **By giving jurisdictions the option to redirect requests for bulk criminal records to DPS, the State may save counties and municipalities the substantial time and money required to sufficiently respond to requests for bulk criminal records, while not incurring any additional cost to the state.** Because DPS currently has a system in place to respond to requests for bulk criminal records and to provide updates to criminal records to all requestors on a monthly basis, it is fiscally and socially responsible to redirect requests for bulk criminal records to DPS. **Alternatively, for those jurisdictions that choose to continue releasing criminal records in bulk, such records will be updated in a manner similar to that already required by DPS.**
- **Increase transparency in the dissemination process** by requiring clerks and criminal justice agencies that grant bulk records requests for Class C disposed offenses and pending cases to maintain a record of the name and contact information of the requestor and the most recent date the bulk records were provided. This information should be published on the clerk’s or agency’s website or prominently displayed in a public area of the clerk’s or agency’s place of business.

### Citations

<sup>1</sup> Helen Gaebler, “Criminal Records in the Digital Age: A Review of Current Practices and Recommendations for Reform in Texas,” (William Wayne Justice Center for Public Interest Law, The University of Texas School of Law, 2013): 2.

<sup>2</sup> Dennis A. DeBacco & Owen M. Greenspan, “Survey of State Criminal History Information Systems, 2012,” (Bureau of Justice Statistics, U.S. Department of Justice, 2014): Table 1, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>. The number of individual offenders in the state criminal history file was 11,824,200.

<sup>3</sup> Texas Department of Public Safety, “Fourteenth Report Examining Reporting Compliance to the Texas Computerized Criminal History System,” (January 2016): 3, [https://www.dps.texas.gov/administration/crime\\_records/pages/complianceRpt14.pdf](https://www.dps.texas.gov/administration/crime_records/pages/complianceRpt14.pdf).

<sup>4</sup> SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2010): 83, <http://www.search.org/files/pdf/RNTFCSCJRI.pdf>.