



**Caitlin Dunklee**, Policy Analyst  
Work: (512) 441-8123, ext. 104  
Cell: (646) 269-7344  
cdunklee@TexasCJC.org  
www.TexasCJC.org

## **Making Deferred Adjudication WORK** *Record expunction can save money and increase public safety*

### **WHAT IS DEFERRED ADJUDICATION AND HOW CAN WE MAKE IT WORK BETTER?**

Through deferred adjudication, a judge suspends a determination of a defendant's guilt and places him or her on probation; the defendant is released into the community and supervised by the court, with conditions of supervision.<sup>1</sup> After successful completion of a term of deferred adjudication and fulfillment of all community supervision obligations, the judge dismisses the proceedings and discharges the person from court supervision.<sup>2</sup>

Deferred adjudication in Texas can increase public safety and save money by allowing individuals charged with certain crimes to be supervised and treated in the community as opposed to filling beds in expensive corrections facilities. Additionally, deferred adjudication can mitigate the barriers created by having been found guilty of a crime. However, **current practice dictates that anyone placed on deferred adjudication – even for a minor misdemeanor offense – will have a permanent criminal record.**<sup>3</sup>

- » Texas law **does not** allow expunction of deferred adjudication offenses ranked as Class B misdemeanors or higher.<sup>4</sup> An expunction would clear a defendant's record of the offense.<sup>5</sup>
- » Though Texas law **does** allow individuals to request an order of nondisclosure after set time periods for certain offenses, such orders still enable criminal justice agencies to disclose offense-related information to particular entities, including licensing boards.<sup>6</sup>

**A criminal record can severely limit individuals' ability to support themselves.** Having a record – even for a deferred adjudication resulting from a misdemeanor offense – can compromise an individual's ability to enter or re-enter the workforce, access housing, and receive needed benefits from programs such as the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families.<sup>7</sup> Criminal records, in other words, destabilize people. In certain circumstances, this vulnerability can increase the likelihood of re-offending.

**It is time that Texas removes barriers to successful participation in the workforce, and helps ensure that Texans can access employment, safe housing, and critical tools for personal responsibility.**

### **HUNDREDS OF THOUSANDS OF TEXANS ARE PLACED ON DEFERRED ADJUDICATION**

**Since September 1, 2010, Texas courts assigned 290,000 cases with a deferred adjudication.**<sup>8</sup> Some of these individuals will serve between five and ten years on community supervision.<sup>9</sup> Of the approximately 178,000 individuals placed on deferred adjudication for misdemeanor offenses during this time, about 40,000 (22%) were charged with traffic offenses, and about 30,000 (17%) were charged with possession or delivery of small amounts of marijuana.<sup>10</sup> Of the approximately 113,000 individuals placed on deferred adjudication for felonies, over 30,000 (27%) were charged with drug possession.<sup>11</sup> Even after these individuals complete deferred adjudication, they may face major barriers to obtaining employment and housing resulting from the inclusion of their deferred adjudication disposition on their criminal record.

## CASES PLACED ON DEFERRED ADJUDICATION BETWEEN SEPTEMBER 2010 AND DECEMBER 2012<sup>12</sup>

Total Cases Placed on Deferred Adjudication (Sept 2010 – Aug 2012)	290,971
Total for Felonies	113,222
<i>Felony Drug Possession</i>	30,055
Total for Misdemeanors	177,749
<i>Misdemeanor Traffic Offense</i>	39,824
<i>Misdemeanor Possession of Marihuana</i>	30,794

### KEY FINDINGS

- **Since September 2010, Texas courts have placed over 290,000 individuals on deferred adjudication.**<sup>13</sup>
- **Deferred adjudication can be imposed for even minor misdemeanor offenses like gambling or state jail felony offenses like marihuana possession.**<sup>14</sup> Such offenses should not prohibit future access to a home or job.
- **Criminal records compromise an individual's ability to enter the workforce.**<sup>15</sup> Individuals with a felony conviction cannot qualify for many employment positions that require licenses (including air conditioning and refrigeration contractors, electricians, water well drillers, dog trainers, and many others), even if they have successfully completed a sentence of deferred adjudication.<sup>16</sup>
- **Criminal records destabilize Texans by creating barriers to safe housing.** Under statutes in all 50 states, rental property owners may – but are not required to – screen for and refuse to rent to people with criminal backgrounds.<sup>17</sup>
- **Allowing for record expunction is aligned with the intention of deferred adjudication.** Barriers to housing, employment, and other benefits are especially troubling when a judge has decided that an individual should be provided a chance to rehabilitate, rather than be burdened with a lifelong criminal record. In these circumstances, any barriers to successful reintegration should be removed.

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

- Allow record expunction for certain deferred adjudication cases after designated periods of time.
  - ✓ For certain misdemeanors, allow record expunction for deferred adjudication after five years.
  - ✓ For certain felonies, allow record expunction for deferred adjudication after ten years.

Supporting individuals who successfully complete deferred adjudication sentences will save money and increase public safety.

## Citations

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<sup>1</sup> TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC. 5(C)

<sup>2</sup> TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC. 5(C)

<sup>3</sup> Texas Department of State Health Services, *What exactly is a deferred adjudication?*, <http://www.dshs.state.tx.us/emstraumasystems/Deferredweb.shtm>.

<sup>4</sup> TEX. CODE OF CRIM. PROCEDURE, ART. 55.01(A)(2)

<sup>5</sup> TEX. CODE OF CRIM. PROCEDURE, ART. 55.03

<sup>6</sup> TEX. GOV. CODE, SEC. 411.081

<sup>7</sup> Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, *The Journal of Law and Criminology*, Vol. 100, No. 3, Northwestern University, School of Law, 2010, 1215.

<sup>8</sup> The Texas Office of Court Administration: Court Activity Reporting and Directory System, <http://card.txcourts.gov/ReportSelection.aspx>

<sup>9</sup> TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC. 5(A)

<sup>10</sup> The Texas Office of Court Administration.

<sup>11</sup> The Texas Office of Court Administration.

<sup>12</sup> The Texas Office of Court Administration.

<sup>13</sup> The Texas Office of Court Administration.

<sup>14</sup> TEX. CODE OF CRIM. PROCEDURE, ART. 42.12 SEC.3

<sup>15</sup> Pinard, *Reflections and Perspectives*, 1215.

<sup>16</sup> TEX. OCC. CODE, 53.021 (c)(3)

<sup>17</sup> Reentry Policy Council, *Report of the Re-entry and Community Policing: Strategies for Enhancing Public Safety*, (March 2006), <http://www.urban.org/publications/411061.html>.