

SEALING JUVENILE RECORDS AND REALTED ISSUES



Southwest Juvenile Defender Center
Center for Children Law and Policy
Continuing Legal Education: Sealing Juvenile Records
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PRESENTED BY

Miriam J. Riskind, Isenberg & Riskind
miriskind@aol.com
(713) 940-0640

Kendall Y. Mayfield, Administrative Attorney/Public
Information Officer
Kendall.mayfield@hcjpd.hctx.net
713-222-4808

Jeanice Dawes, Attorney at Law
jj.dawes@sbcglobal.net
832-818-0403

What you will learn this hour?

Goals

- To provide practitioners with the information necessary to identify and locate juvenile records.
- To provide practitioners with the information necessary to address inquiries from juveniles and families concerning juvenile records.
- To provide practitioners with the tools to seal juvenile records.

Objectives

- Identify juvenile records.
- Effectively and accurately respond to inquiries and families concerning juvenile records.
- Use resources provided to seal juvenile records.

What are juvenile records?



Sounds like an easy answer,
doesn't it?

Texas Family Code

Juvenile records contain information developed, assembled, or collected for proceedings under the Juvenile Justice Code.

Juvenile records are not any of the following:

- Motor Vehicle Records
- Justice or Municipal Court Records
- Certain Department of Public Safety Records
- Records of child victims or witnesses in cases not covered in the Juvenile Justice Code (JJC).
- Other records concerning children who are not defined as "children" by JJC.

Why is this important?

- **Criminal versus Juvenile Court Records**
- **Juvenile Justice and Municipal Court Records**

Juvenile Records and Files are Confidential!

Section 58.005

Records and files concerning the diagnosis, evaluation or treatment or used to make a referral to a public or private agency of a child under juvenile court supervision are subject to inspection by:

- Professional staff or consultants of the public or private agency
- Juvenile Judge, Juvenile Probation Officers, Professional Staff or Consultants of the Court
- Attorney for the Child
- Governmental Agencies As Required by Law
- Agencies or institutions providing treatment or services and have signed a confidentiality agreement.
- Texas Department of Criminal Justice or the Texas Youth Commission
- With leave of Court

Physical Records and Files

Section 58.007

The records and files of the juvenile court, probation department, clerk or prosecuting attorney may only be inspected by the following:

- Professional staff or consultants of the public or private agency
- Juvenile Judge, Juvenile Probation Officers, Professional Staff or Consultants of the Court
- Attorney for the Party
- Juvenile Justice Agency
- Agencies or institutions providing treatment or services and have signed a confidentiality agreement.
- With leave of Court

Physical Records and Files --continued

Section 58.007

Law enforcement files must not be disclosed to the public. However, these records may be inspected or copied by:

- a Juvenile Justice Agency as described in Section 58.101, Criminal Justice Agency as described in Section 411.082 of the Texas Government Code, the child and the child's parent/guardian.

Youth in the Texas Youth Commission

Section 61.073

Records and files pertaining to examinations, treatment, diagnosis and disposition of youth in the Texas Youth Commission may only be disclosed as provided by:

- Section 58.005 of the Texas Family Code
- Section 61.093 of the Texas Human Resources Code
- Section 61.095 of the Texas Human Resources Code

What Happens to Juvenile Records?



1. Destruction of Records
2. Automatic Restricted Access

Texas Family Code, Chapter 58 Destruction of Records

Section 58.001(c)

Law enforcement must destroy the records of a juvenile taken into custody, if a referral is not made to juvenile court within 10 days. Under Section 58.002(b) law enforcement must annually certify to the juvenile board that the information specified in Section 58.001 has been destroyed.

Section 58.003(i)

The court may order the destruction of records, if the following conditions have been met:

- case was not a felony or jailable misdemeanor;
- individual is 21 years of age; and,
- individual not has not been convicted of a felony.

Section 58.006

The court shall order the destruction of records if the following conditions exist:

- no probable cause exists and the case was not referred to the prosecutor; or,
- no probable cause exists after prosecutorial review.

Destruction of Certain Records

Section 58.006

Court shall order the destruction of records of a child if:

- It is determined that no probable cause exists under Section 53.01 and it is not referred to the prosecutor; or,
- A no probable cause determination is made by the prosecutor under Section 53.012.

Destruction of Certain Physical Records and Files

Section 58.0071

This section permits juvenile probation departments, prosecutors, and law enforcement agencies to destroy records to certain closed juvenile cases.

- The juvenile probation department may destroy records and files with authorization from the juvenile board.
- Law enforcement may destroy certain records and files with the authorization of the law enforcement chief.
- The prosecutor's office may destroy records with the authorization of elected prosecutor.

Court Clerks

Section 58.0071 does not require agencies to destroy records, but gives them a mechanism to alleviate the expensive cost to maintain both paper and electronic files. Court clerks may only destroy records that have been preserved in electronic format.

Requirements for Destroying Records and Files under Section 58.0071

- The juvenile is at least 18 and the juvenile's most serious offense was Conduct Indicating a Need for Supervision (CINS) and there was no adjudication. Or the referral did not relate to CINS or delinquent conduct and the juvenile court did take action on the referral.
- The juvenile is at least 21 and the juvenile's most serious offense was a misdemeanor, or the most serious offense was a non-adjudicated misdemeanor or felony.
- The juvenile is at least 31 and the most serious offense was a felony.

Do juvenile have a right to have their records destroyed?



NO!

Automatic Restricted Access



The Answer?

What is Restricted Access?

In 2001, the 77th Legislature established a new concept in Texas juvenile law. Subchapter C was added to Chapter 58 in order to provide juveniles with some of the protections afforded to juveniles who had their records sealed.

Rationale behind Restricted Access

The law was established based on a study that indicated most juveniles did not have their records sealed primarily for economic reasons.

Chapter 58, Subchapter C

- Section 58.201-Defines the term, "department".
- Section 58.202-Exempt Records
 - Sex Offender Registration Records under Chapter 62 of the Texas Criminal Code of Procedure.
 - Gang-Related Records under Chapter 61 of the Texas Criminal Code of Procedure

Section 58. 203 Certification (Eligibility)

The department shall certify to the juvenile probation department that the individual for which a record exists is subject to automatic restricted access and meets the following criteria:

- is at least 21 years of age;
- the individual's case does not include a proceeding for violent/habitual felony conduct;
- the individual has not been certified for to stand trial as an adult; and,
- after age 17, the named individual was not granted deferred adjudication or convicted of a felony or jailable misdemeanor.

Section 58.204. Restricted Access on Certification

Upon certification, the Department of Public Safety may not disclose the existence of records or information from the records except to:

- Criminal justice agencies for criminal justice purposes as defined by Section 411.082 of the Texas Government Code.
- Texas Juvenile Probation Commission, the Texas Youth Commission and the Criminal Justice Policy Council for research purposes.

Section 58.205. Request to the FBI

- Upon certification, a request shall be made to the Federal Bureau of Investigation to restrict access to files, with access only by a criminal justice agency for a criminal justice purpose.
- If restricted access status is not feasible, a request to delete files will be made.



Section 58.206. Effect of Certification

Upon certification, the person for which a juvenile record exists does not have to state in any proceeding (unless otherwise provided by law), or any application for employment or license that:

- records exist;
- participated in a proceeding under Title III
- and shall not be admitted against the person who is the subject of the records in any proceeding except a proceeding in which the juvenile adjudication was admitted under Section 12.42 of the Penal Code, Article 37.07 of the Criminal Code of Procedure; or otherwise provide by law.

Section 58.207. Juvenile Court Orders on Certification

Provides that upon certification of records under Section 58.203, the juvenile court shall order the following records be accessed as provided by Section 58.204(b):

- Texas Youth Commission records that are maintained by the commission.
- Juvenile Probation Department records
- Records maintained by the court clerk, prosecutor's office, and law enforcement.

The law also requires the juvenile probation department to make reasonable efforts to notify the individual that access to their record has been restricted and the legal significance of this action. However, the subject of the action **must notify the juvenile probation department and provide current address.**

Section 58.207. Juvenile Court Orders on Certification --Continued

The agency receiving the order may permit access granted Section 58.204(b) and will respond to inquiries about the records that "records do not exist".

Section. 58.208. Information to Child on Discharge

Upon discharge or the last action on a non-adjudicated case, the designated juvenile justice official shall provide the child with:

- a written explanation of automatic restricted access;
- a copy of Subchapter C; and,
- If the child wishes to be notified of an action restricting access to the records, the child must notify the juvenile probation department in writing that they wish to be notified before their 21st birthday and must provide a current address.



Other Pertinent Information

- Section 58.209. Information to Child by the Probation Officer or Texas Youth Commission
- Section 58.210. Sealing or Destruction of Records Not Affected
- Section 58.211. Rescinding Restricted Access

Section 58.003. Sealing Records



APPLICATION FOR COURT ORDERED SEALING OF RECORDS

Section 58.003. Sealing Records

- Subsection (a): Upon application of an individual that has a juvenile record, the Court shall order the records sealed if:
 - it has been 2 years since discharge or an official action on a non-adjudicated case; and,
 - Since the time specified above, the individual has not been convicted of a felony or misdemeanor (moral turpitude), or adjudicated for delinquent conduct or CINS and there are no proceedings pending.
- Subsection (c): Courts may not order the sealing of records pertaining to an individual who has received a determinate sentence for a penal offense listed in Section 53.045 of the Texas Family code, or habitual felony conduct under Section 51.031.

Section 58.003. Sealing Records

- Subsection (c): A court may order the sealing of records of an individual adjudicated of a felony if:
 - The individual is at least 21;
 - The individual was not certified under Section 54.02;
 - The records have not been used in the penalty phase in a criminal proceeding; and,
 - The individual has not been convicted of a felony after age 17.

Effective Sept. 1, 2009

- A juvenile court may order the sealing of records concerning a child adjudicated in Conduct Indicating a Need for Supervision that violated a penal law of the grade of misdemeanor or felony if the child successfully completed a drug court program under Chapter 469, Health and Safety Code
- Upon the successful completion of a drug court program, the court may
 - Order the sealing of the records immediately and without a hearing; or
 - Hold a hearing to determine whether to seal the records
- If court orders the sealing of a juveniles records under this provision, then the prosecutor is authorized to keep a separate record until the child's 17th birthday containing the child's name, birthday, and date that child completed the drug court program

Effective Sept. 1, 2009

- The court may grant the relief authorized in this provision any time after the final discharge of the person or after the last official action in the case if there was no adjudication. If child is found to not be guilty of each offense alleged, the court shall immediately, without any additional hearing, order the sealing of all files relating to the case.
- The court shall hold a hearing before sealing a person's records under Subsections (a) or (c) unless the applicant waives the right to a hearing in writing and the court and the prosecuting attorney for the juvenile court consent.

Section 58.003. Sealing Records

- The court shall hold a hearing before sealing a person's records under Subsections (a) or (c) unless the applicant waives the right to a hearing in writing and the court and the prosecuting attorney for the juvenile court consent. Notice shall be given to the following:
 - individual named in the application to seal;
 - juvenile prosecutor;
 - discharging institutional authority, parole or agency having custody of the individual named in the application; and,
 - law enforcement.

Section 58.003. Sealing Records

- A copy of the sealing order shall be sent to each agency or official.
- Upon entry of the order:
 - All law enforcement, clerk, prosecuting attorney and juvenile court records shall be sealed and sent to the issuing court within 61 days after the order is received.
 - All records of private or public agencies or institutions shall be sealed and sent to issuing court within 61 days after the order is received.
 - All indexed references shall be deleted within 61 days after the order is received and certification shall be sent to court.
 - The adjudication shall be vacated and treated as if it never occurred. (There are some exceptions.)
- Texas Juvenile Probation Commission Records are not covered by the order.

Why Seal Juvenile Records?

- Automatic Restricted access is not that "restricted"
 - Not a permanent solution
 - Can be unrestricted upon application to the court
- Need not be disclosed to anyone

How can Juvenile Records be used?

- As impeachment and character evidence in another court proceeding
- Used to enhance punishment in another criminal court proceeding
- Job applications, college applications, licensing applications, military applications, and financial aid applications

Expunction of Municipal Court Records

- Used in JP and Municipal Courts
- Expunged upon application to the court
- Misdemeanor, Education Code Violations, certain Alcohol and Tobacco Violations
- Important because not all juvenile records are juvenile court records

Expunction of Truancy Records

- **CCP-Art. 45.055. EXPUNCTION OF CONVICTION AND RECORDS IN FAILURE TO ATTEND SCHOOL CASES.**
- (a) An individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.
- (b) To apply for an expunction, the applicant must submit a written request that:
 - (1) is made under oath;
 - (2) states that the applicant has not been convicted of more than one violation of Section 25.094, Education Code; and
 - (3) is in the form determined by the applicant.

Expunction in JP/Municipal Records other than Education Code Violations

- Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS OF CHILDREN. (a) In this article, "child" has the meaning assigned by Section 51.02, Family Code.
- (b) A person convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child may, on or after the person's 17th birthday, apply to the court in which the child was convicted to have the conviction expunged as provided by this article.
- (c) The person must make a written request to have the records expunged. The request must be under oath.
- (d) The request must contain the person's statement that the person was not convicted while the person was a child of any offense described by Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged.
- (e) The judge shall inform the person and any parent in open court of the person's expunction rights and provide them with a copy of this article.

Additional Information

- Please research statutes pertaining to your states sealing procedures
- Resources
 - National Juvenile Defender Center at www.njdc.info
 - Local Public Defender's Office
 - Local Bar Association at www.findlaw.com/06associations/state
 - Juvenile Defense Attorneys