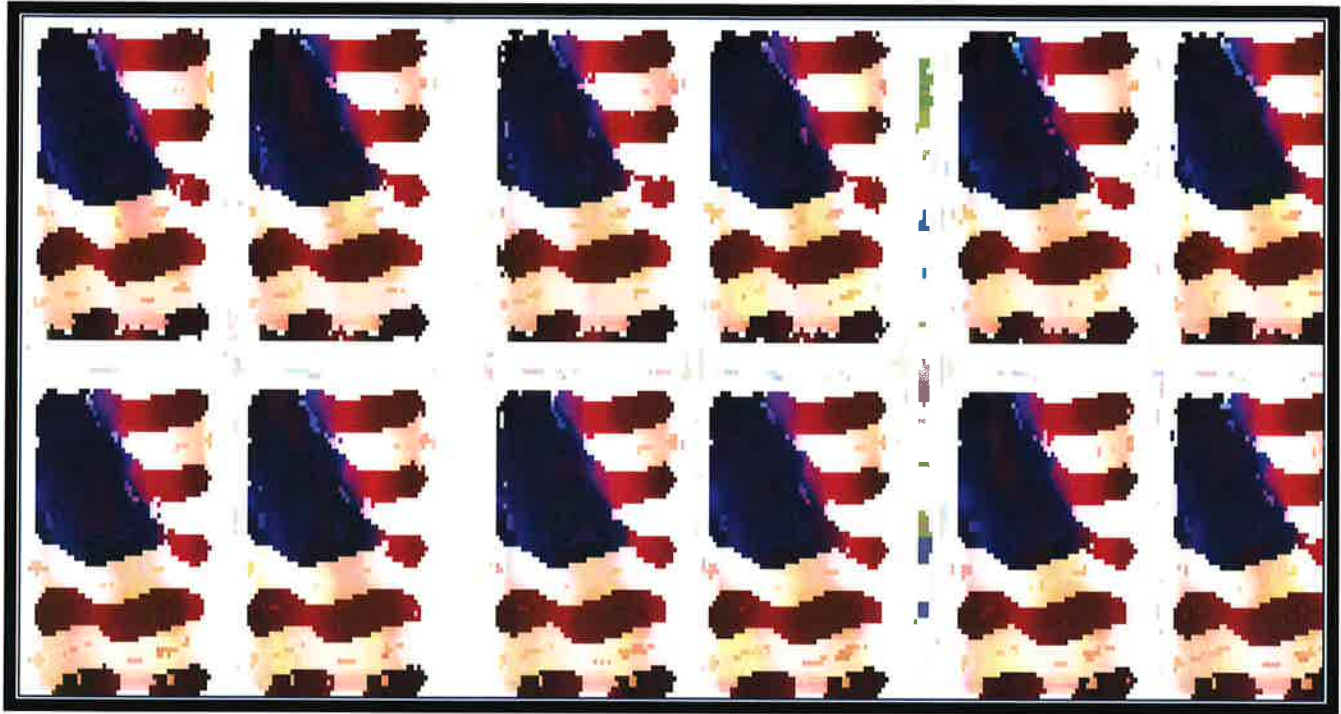


Signed, Sealed, Delivered:

Understanding the New Juvenile Sealing Laws



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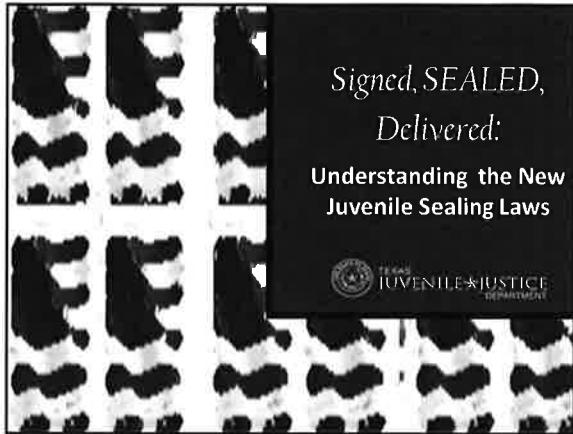
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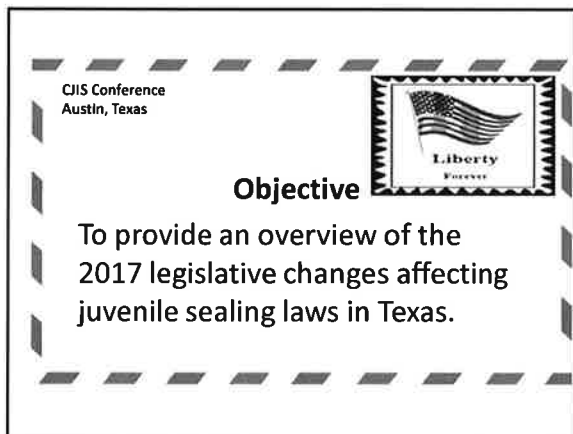
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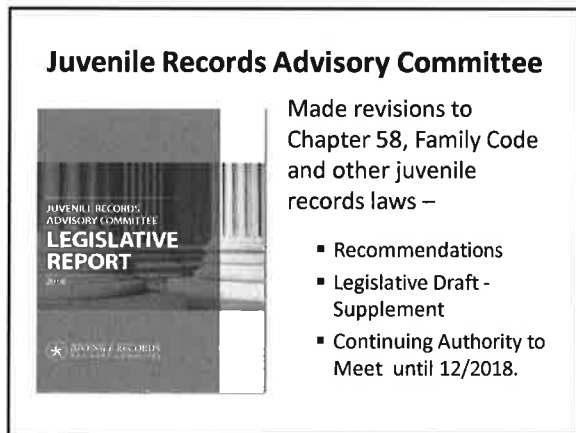
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Transforming Young Lives & Creating Safer Communities







SB 1304

Relating to confidentiality, sharing, sealing and destruction of juvenile records.



- Contains revisions to Chapter 58, Family Code proposed by the Juvenile Records Advisory Committee.
- Limits access to DPS' JJIS to criminal justice agencies, military, certain federal entities, TJJD, OIO and DFPS.
- REPEALS restricted access.
- Authorizes sealing with or without an application using simpler eligibility criteria.
- Maintains DPS and TJJD data for recidivism studies.

SB 1304

Effective Date

September 1, 2017



Applicability

- Records created before, on, or after the effective date



What are Protected Status Records?

- Texas law assigns a special “protected status” for confidential juvenile records to prevent or limit disclosures at key procedural stages or after a child exits the system.
- A record is placed on protected status by:
 - court order
 - operation of law
- Age, nature of the offense, statutory criteria, and subsequent history are also factors.

Who has a “Juvenile Record” in Texas?

Juvenile is a person Age 10 and < 17 *(or under extended jurisdiction)*

- Arrested
- Taken into Custody
- Charged with a with Class B or Higher Offense
- Also,
 - Class C, if the JP or Municipal Court transferred the case to juvenile court.



Juvenile Justice Information System “On Lock”

JJIS Records (2017)

- “On lock” (i.e., restricted) at the point of creation;
- Licensing entities under 411, GC no longer have access;
- Only disseminated to criminal justice entities listed in §58.106 (a) for cj purposes.



Juvenile Justice Information System

Limits on Dissemination

§58.106 (a), FC

- DPS can share JJIS data only with:
 - Military, with permission of juvenile
 - Criminal justice agency
 - Noncriminal justice agency if authorized by federal law or executive order to receive
 - Juvenile justice agency
 - TJJD
 - Office of Independent Ombudsman
 - Court exercising jurisdiction over a juvenile
 - DFPS for background checks for placement purposes



Juvenile Justice Information System

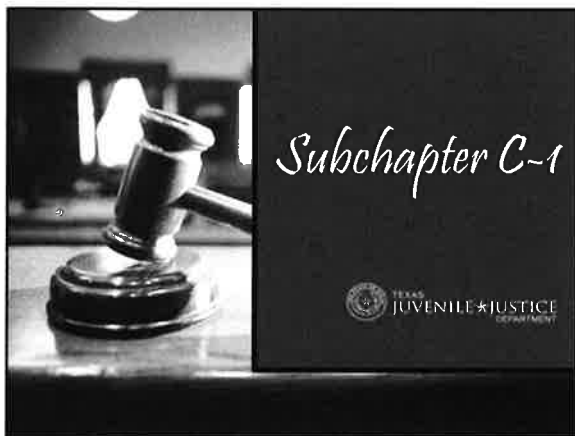
Reporting

§58.104(a) and (b), FC

Requires the following to be reported to DPS for inclusion in the JJIS:

- Date of termination of probation supervision
- Date of termination of deferred prosecution supervision
- Date of discharge from commitment





Definitions

Sealing and Destruction

§58.251, FC

Record - All documentation related to a **juvenile matter**, including information contained in that documentation.

– Held by a juvenile probation department, court, prosecutor, law enforcement or other juvenile service provider.

Juvenile Matter. Referral and all related court proceedings and outcomes.

Electronic Records. An entry in a computer file, microfilm, or other electronic storage medium.

Physical Record. A paper copy of a record.

Exempted Records

Sealing and Destruction

§58.252, FC

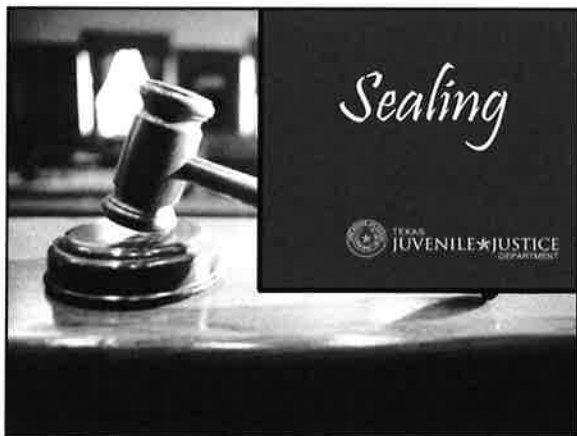
The following records are not subject to Subchapter C-1:

– DPS or local law enforcement:

- Gang Database
- Sex Offender Registry

– Records maintained by TJJD for statistical and research purposes





Sealing With Application

- The court-ordered sealing of juvenile records for protection and safekeeping. Sealed records may be inspected or released under limited circumstances.
- §58.256 - 58.259, FC



Sealing With Application Eligibility

AGE

- **18**; or
- **If under 18--**
 - 2 years since final discharge

OFFENSE CRITERIA

- No Pending Delinquent Conduct
- Never Certified as an Adult
- No Adult Felony Convictions
- No Pending Adult Charges (Felony or Jailable Misdemeanor)

Applies to Entire Record
Eligibility relates to every matter referred.

§58.256 (c) – (e), FC

Sealing With Application Initiating the Process

§58.256, FC

- **Application** is submitted to the juvenile court to have records sealed in all matters relating to the person.
- The application should:
 - Contain info required in statute; and
 - Allege the person meets the eligibility criteria.
- **Filed by:**
 - Subject of juvenile records; or
 - Attorney on behalf of subject.
- **Fees**
 - Filing fees are prohibited.



Sealing With Application Application/Order Prohibited

INELIGIBLE HISTORY

- Determinate Sentence/Habitual Felony Adjudication
 - SXO Registration – Active Duty
 - Committed to TJJD
 - Committed to Travis Co. PAJ. Facility
- §58.256 (d)(1-3) FC



Sealing With Application Hearing on Application

HEARING

- The court may order sealing with or without a hearing;
- May not be DENIED without a hearing;

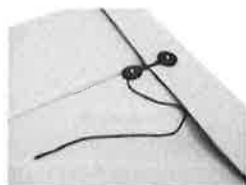
NOTICE & TIME FOR HEARING

- Held no later than 60 days after court receives application;
 - Reasonable notice to listed parties.
- §58.257, FC



Sealing Without Application

- The **scheduled** (i.e., *automatic*) court-ordered sealing of juvenile records based on age and eligibility criteria for protection and safekeeping.
- §58.253 - 58.255, FC



Sealing Without Application Eligibility

<p>AGE</p> <ul style="list-style-type: none"> • 19 <p>DELINQUENT CONDUCT Misdemeanor or Felony Referrals -- No Adjudication</p> <ul style="list-style-type: none"> • Misdemeanor -- Adjudication 	<p>OFFENSE CRITERIA</p> <p><small>NEW</small> – No Felony Adjudications</p> <ul style="list-style-type: none"> – No pending charges (adult/juvenile) – Never Certified as Adult – No Adult Convictions (jailable misdemeanor or felony) <p style="text-align: right;">§58.253, FC</p>
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Sealing Without Application Initiating the Process – DPS Searches


DPS will:

- Conduct **daily eligibility searches** of delinquent offense history in JJIS.
- Identify the **persons eligible** for sealing based on criteria in Family Code
- Upload notices to the CJIS web portal.

JPD will:

- Retrieve notices by **logging onto the CJIS website** using county or department ORI number
- Use ORI Number to download notification.

– *Remember* -- DPS search includes adult history.



Certification of Eligibility

DPS Juvenile Seal Worklist

NEW **DPS Juvenile Seal Worklist**

- Contains ALL RECORDS that qualify for sealing since January 1996 to date
- Users can search by DPS number, TRN, Date of Arrest, County Assigned, and Status
- Posted on CJIS/EDR Tab



Certification of Eligibility Sealing Without Application

§58.254, FC

- DPS will certify to JPD that records appear eligible for sealing;
- Within 60 days, JPD will provide court notice and list of all referrals and outcomes;
- Court shall order sealing within 60 days.



Certification of Eligibility Sealing Without Application - Issues

§58.254, FC

Appears INELIGIBLE

- JPD contacts DPS within 15 days of receiving notice;
- If determine not eligible, JJIS updated; no further action taken.
- **If ELIGIBLE**, JPD has 30 days from date of determination to give court the info on referrals and outcomes;
- Court shall seal within 60 days.



CINS-Only Sealing Without Application

§58.255, FC

Only CINS Referral History

- Entitled to have all records sealed if:
 - At least 18
 - No delinquent conduct referrals
 - No adult felony conviction or pending adult charges (any level)
- JPD identifies and gives court notice
- Court shall order sealing within 60 days



CINS-Only Sealing

Initiating the Process – TJJJ Search

TJJJ Comprehensive CINS Report (As of 11/15/17)

- Sent Worklist of CINS – Only Referrals
- Comparative MATCH of JCMS monthly extract and DPS – CJIS;

- There is a built-in DELAY until the PID has been sealed and TJJJ's receives the EDI extract the following month.

Subsequent Reports

- Contain CINS-Only referrals that turned 18 since the last report.
- Will not be compared to DPS after initial list.

CINS Only - Destruction

Possible Alternative to CINS Sealing

§58.264, FC

CINS-Only records may be destroyed under §58.264 as an alternative to CINS Sealing Without Application.

Must

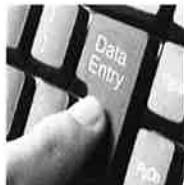
- Meet Destruction Criteria
- Have Juvenile Board Approval



Actions Taken Upon Receipt of Order

§58.259, FC


- DPS, TJJJ, JPDs, Others must:
- Store sealed records so that they are accessible only to the custodian of records;
- Follow specific steps in statute;
- Send written verification to the court w/in 60 days



Sealed Records
Physical or Electronic Records

§58.259(b), FC


- Records are considered sealed if:
 - Not destroyed and
 - Stored in a manner that allows access only by the custodian of records for the entity possessing the records



Sealed Records
Unable to Comply

§58.259(d), FC


- If information is incorrect or insufficient, entity must notify court within 30 days
- Court to take necessary action to correct, including getting additional information



Actions Taken Upon Receipt of Order
No Records

§58.259(e), FC

- If entity has no records, written verification of that fact shall be provided to the court within 30 days



Case Management Systems

Sealing and Destruction

After a sealing order has been issued or destruction is authorized...

- Do NOT DELETE records;
- Follow JCMS instructions to flag records as sealed;
- Use the same process for destruction;
- Records are no longer accessible to users, but only to DPS and TJJ for statistical purposes.



Verification After Sealing

Each agency that receives a Sealing Order must provide written verification that:

- Requirements of §58.259, FC have been met;
- All records have been sealed in a manner that limits access only to the custodian of records.



Verification must be returned to the issuing court.

Order Sealing Records

Procedural Aspects

§58.258, FC

- All adjudications vacated
- Proceedings dismissed and treated for all purposes as if they never occurred;
- Clerk seals court records, including those in the clerk's case management system;
- Clerk sends copy of Order to all entities listed in the order – within 60 days;



Inspection and Release of Sealed Record Unsealing

§58.260, FC

- Subject of order can ask court to unseal for any reason
- Prosecutor can ask court to unseal to review for possible use in:
 - Capital prosecution or
 - For enhancement under Section 12.42, Penal Code
- Court, TDCJ, TJJJ can request for sex offender screening purposes



Sealed Records Later Inquiry - Records Do Not Exist

§58.259(c), FC

- After receipt of a sealing order, an entity must respond that **NO RECORDS EXIST** relating to the person or matter.



Effect of Sealing Record Subject of Juvenile Record

§58.261, FC

- Not required to state was subject of juvenile matter:
 - in any proceeding
 - on housing application
 - on employment application
 - on admission application
 - on licensure application
 - on application for other public or private benefit
- Info in records, fact they once existed, or denial cannot be used against person in any manner
- Subject cannot waive the protected status of the records

**Information to Child
JPD Duty to Explain**

§58.262, FC

- **On referral**, JPD employee shall give the child and parent written explanation of sealing process and a copy of law;
- **On final discharge** (or last official action if no adjudication), probation officer or TJJD official, shall give a written explanation of eligibility for sealing and a copy of the law
- Law gives specific info that must be included
- TJJD has prepared a one-pager (2017)



**Sealing of Records
Recap**

▪ **STEP ONE: DPS & TJJD Notifications**

- DPS will conduct a daily search of age and offense history in (DC) JJIS – including adult history; [58.254, FC]
- Initial batch is a “Worklist” of eligible juveniles;
- TJJD will send notifications on juveniles with CINS Only records that have been matched by DPS.

▪ **STEP TWO: Local Review**

- JPDs will retrieve notifications using ORI Number and conduct a local verification;
- If not eligible, notify DPS w/in 15 days;
- Identify agencies and other holders of records;
- Send notice and list of referrals and outcomes to court.
- *Note* – All records must meet eligibility criteria.



**Sealing of Records
Recap**

▪ **STEP THREE: Initiate Sealing Process**

- Without Application (*i.e.*, Automatic)
- With Application (*application to petition court*)
- Court may not impose fees

▪ **STEP FOUR: Options for Hearing**

- Court may order sealing without a hearing;
- Court may not deny an application without a hearing;
- Hearing must be held no later than 60th day after application.

▪ **STEP FIVE: Upon Entry of Sealing Order**

- Sealing Order is issued within 60 days
- Entities must take actions required in statute.



NEW **Sealing Orders**
Juvenile Law Sections Forms

- Sample Sealing Orders and Verification Forms will be developed.
- Incorporates the processes outlined in SB 1304 enacted during the 85th Session.
- Sample forms will be available online at the Juvenile Law Section website www.juvenilelaw.org.

Note -- Should be reviewed by local juvenile court prosecutor or legal counsel for sufficiency and adapted for the county's particular situation or drafting preferences.



Destruction of Records
No Probable Cause

§58.263, FC

- If no probable cause found at intake or by prosecutor, court shall order records destroyed
- Moved from 58.006

**Permissible Destruction
Spring Cleaning**

§58.264, FC

- At age 18 if CINS is most serious conduct referred, whether or not adjudicated
- At age 21 if misdemeanor most serious conduct adjudicated or if referred for felony or misdemeanor and not adjudicated
- At age 31 if adjudicated for felony
- Probation, prosecutor, law enforcement, with permission of agency head



**Permissible Destruction
Spring Cleaning**

§58.264, FC

- Applies to all records, no matter when created
- Clarified that if an entity converts paper records to electronic, destroying paper records while keeping electronic does not equal "destruction" under statute
- Does not authorize destruction of records maintained by TJD for research and statistical purposes
- Clarified court can never fully destroy records



**Juvenile Records Not Subject to Expunction
Clarification**

§58.265, FC


- Juvenile records are not subject to an order of expunction issued by any court;
- Expunction statutes apply to criminal records of children in justice and municipal court;



SB 1304
Statewide Implementation & Consistency Goals

Informational Materials-- SB 1304


- Implementation Recommendations (*TJJD Website*)
- **Online** - Juvenile Records in Texas
- **Online** - Juvenile Records One-Pager and Statute
- **Online** – Sample Forms (*JLS Website*)
- Ongoing Training



2017 Special Legislative Issue



- State Bar Juvenile Law Section Report, Special Legislative Issue.
- Special feature on SB 1304.
- TJJD Legal Education & Technical Assistance and guest contributors prepared useful summaries and intent history of key juvenile justice bills enacted during the 85th Legislative Session.
- Available online at www.juvenilelaw.org and www.tjjd.texas.gov



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