

A SUMMARY OF TEXAS FAMILY CODE PROVISIONS  
REGARDING JUVENILE RECORDS IN TEXAS

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# JUVENILE RECORDS IN TEXAS

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## CONFIDENTIALITY

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A record is defined any documentation related to a juvenile matter, including the information contained in that documentation.<sup>1</sup>

Records concerning a child are confidential and may not be shared unless authorized by law.

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### COURT, PROBATION DEPARTMENT & PROSECUTING ATTORNEY RECORDS

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The records of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child are open to inspection or copying only by:

1. the judge, probation officers, and professional staff or consultants of the juvenile court;
2. a juvenile justice agency with custody or control over juvenile offenders;
3. an attorney representing a party in a Title 3 proceeding;<sup>2</sup>
4. a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information if there is a written confidentiality agreement;
5. a public or private agency or institution providing supervision of the child by arrangement of the juvenile court or having custody of the child under juvenile court order; or
6. with permission of the juvenile court, anyone with a legitimate interest in the proceeding or work of the court.<sup>3</sup>

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The juvenile probation department (but not the other entities) may release information contained in its records without leave of the court pursuant to guidelines adopted by the juvenile board.<sup>4</sup>

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The person who is the subject of the records is entitled to access the records for the purpose of preparing and presenting a motion or application to seal the records.<sup>5</sup>

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The prosecuting attorney is entitled to a certified copy of a record of adjudication for the purpose of offering it as evidence in the punishment phase of a criminal proceeding if the record is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, unless the records have been sealed.<sup>6</sup>

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<sup>1</sup> Texas Family Code §58.251

<sup>2</sup> The attorney must be an attorney for the Title 3 proceeding, not another proceeding involving some or all of the same parties.

<sup>3</sup> Texas Family Code §58.007(b)

<sup>4</sup> Texas Family Code §58.007(i)

<sup>5</sup> Texas Family Code §58.007(b-1)

<sup>6</sup> Texas Family Code Section 58.007(g)

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## FACILITY RECORDS

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Records of TJJD, an entity having custody of the child under a contract with TJJD, or another public or private agency or institution having custody of the child under order of the juvenile court, including a facility operated by or under contract with a juvenile board or juvenile probation department, may be disclosed only to:

1. professional staff or consultants of the agency or institution;
2. judge, probation officers, and professional staff or consultants of the juvenile court;
3. an attorney for the child;
4. a governmental agency if the disclosure is required or authorized by law;
5. a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information if there is a written confidentiality agreement;
6. TDCJ and TJJD for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
7. with permission from the juvenile court, anyone having a legitimate interest in the proceedings or work of the court.<sup>7</sup>

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## LAW ENFORCEMENT RECORDS

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Law enforcement records concerning a child may be inspected or copied only by:

1. a juvenile justice agency with custody or control over juvenile offenders;
2. a criminal justice agency as defined by Government Code §411.082, which is:
  - a. a federal or state agency engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice; or
  - b. a nongovernmental railroad or campus police department that has obtained an originating agency identified from the FBI; and
3. the child and the child's parent or guardian.<sup>8</sup>

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Before the child or the child's parent or guardian may inspect or copy the law enforcement record, the custodian of the record must redact:

1. any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
2. any information that is excepted from disclosure under Chapter 552, Government Code (Public Information Act) or other law.<sup>9</sup>

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<sup>7</sup> Texas Family Code §58.005

<sup>8</sup> Texas Family Code §58.008(d)

<sup>9</sup> Texas Family Code §58.008(e)

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Law enforcement records concerning a child from which a record could be generated shall be:<sup>10</sup>

1. if maintained on paper or microfilm, kept separate from adult records;
2. if maintained electronically in the same computer system as adult records, accessible under controls separate and distinct from controls to access electronic data concerning adults; and
3. maintained on a local basis only and sent to a state or federal depository only as required by Subchapter B (JJIS), Subchapter D (Local JJIS), and Subchapter E (Caseworker/JCMS).

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## REDACTION OF VICTIM INFORMATION

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Before a juvenile court record is disclosed, personally identifiable information regarding a child victim (under age 18) must be redacted except for: JCMS; an agency providing services to the victim; an attorney representing the child in a Title 3 proceeding; an attorney representing another person in a criminal or juvenile proceeding arising from the same act or conduct for which the child was referred to juvenile court; or when disclosure is necessary for law enforcement purposes.<sup>11</sup>

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## EXCEPTIONS TO CONFIDENTIALITY PROVISIONS

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The confidentiality provisions in Chapter 58 do not apply to the following:<sup>12</sup>

1. records maintained under laws regulating operation of motor vehicles;
2. records subject to disclosure under Chapter 62, Code of Criminal Procedure (sex offender registration); and
3. records maintained by a municipal or justice court.<sup>13</sup>

Other exceptions:

1. Records must be released as required by Article 15.27, Code of Criminal Procedure.<sup>14</sup>
2. After transfer of determinate sentence probation to adult court, the petition, grand jury approval, adjudication, and transfer order become a part of the district clerk's public record.<sup>15</sup>
3. If certified as an adult, petition for discretionary transfer, order of transfer, and order of commitment (to jail or juvenile detention) become a part of the district clerk's public record.<sup>16</sup>
4. Law enforcement records of a person with a determinate sentence who is transferred to TDCJ may be transferred to a central state or federal depository for adult records after the date of transfer and may be shared in accordance with the laws governing the adult records in the repository.<sup>17</sup>

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<sup>10</sup> Texas Family Code §58.008(b)

<sup>11</sup> Texas Family Code §58.004

<sup>12</sup> Texas Family Code §58.007(a)

<sup>13</sup> Art. 45.0217, Code of Criminal Procedure, addresses the confidentiality of these records

<sup>14</sup> Texas Family Code §58.007(b)

<sup>15</sup> Texas Family Code §54.051

<sup>16</sup> Texas Family Code §54.02(s)

<sup>17</sup> Texas Family Code §58.008(c)

5. If a prosecutor in an adult case requests a record of adjudication for the purpose of punishment under Section 3(a), Article 37.07, Code of Criminal Procedure, the court must certify and provide a copy to the prosecutor. The prosecutor cannot have this if the records have been sealed.<sup>18</sup>
6. If a child has been reported missing by a parent, guardian, or conservator, information about the child may be forwarded to and disseminated by TCIC and NCIC.<sup>19</sup>

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## AIDING APPREHENSION

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The juvenile court may, for the purpose of apprehension, release information to the public regarding a child who cannot be located if there is a directive to apprehend or warrant. The information that may be shared is: name; aliases; physical description; photograph; and description of alleged conduct.<sup>20</sup>

# SHARING OF RECORDS

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Certain records may be shared for the purpose of improved coordination of juvenile services.

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## INTER-AGENCY SHARING: EDUCATIONAL RECORDS

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At the request of a juvenile service provider (JSP), which is defined as a “governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile,” an independent school district (ISD) or charter school must provide to the requesting JSP confidential information contained in the student’s educational records if the student has been:

1. taken into custody under Family Code §52.01; or
2. referred to a juvenile court for allegedly engaging in delinquent conduct or conduct indicating a need for supervision.

The JSP receiving the information must certify in writing that it has agreed not to disclose the information to a third party other than another JSP. The receiving JSP may use the information only to verify the identity of and to provide delinquency prevention or treatment services to the student. The shared information retains its confidential status and the JSP receiving it may only share it with a third party as directed by a court order or as otherwise authorized by law. The school that shares the records must keep a record of the shared information for at least seven years.<sup>21</sup>

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<sup>18</sup> Texas Family Code §58.007(g)

<sup>19</sup> Texas Family Code §58.008(f)

<sup>20</sup> Texas Family Code §58.007(h)

<sup>21</sup> Texas Family Code §58.0051

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## INTER-AGENCY SHARING: NON-EDUCATIONAL RECORDS

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The non-educational records provision applies only to multi-system youth (a person under 19 who has received services from two or more JSPs).<sup>22</sup> At the request of one JSP, the other must disclose certain information about the juvenile, such as a history of services provided, medical records, assessment results, special needs, program placements, and psychological diagnoses. However, the information may be disclosed only for: identifying a multi-system youth, coordinating and monitoring care, and improving the quality of services provided. The shared information retains its confidential status; the receiving entity may only share it as directed by court order or as otherwise authorized by law.<sup>23</sup>

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## INTER-AGENCY SHARING: DFPS AND JUVENILE JUSTICE AGENCIES

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At the request of DFPS, a probation officer must share with DFPS the conditions of probation of a juvenile under DFPS conservatorship.<sup>24</sup>

At the request of DFPS or a single source continuum contractor for foster care services, TJJD or a local juvenile justice agency must share information necessary to improve and maintain community safety or that assists DFPS or the contractor in the continuation of services for or providing services to the juvenile.<sup>25</sup> Likewise, DFPS must share information at the request of TJJD or a local juvenile justice agency for the same purposes. This applies to a child who is or has been in temporary or permanent managing conservatorship, is or was the subject of a family-based services case, has been reported to DFPS as an alleged victim of abuse, or is the perpetrator or victim in a case in which DFPS concluded there was reason to believe abuse occurred.<sup>26</sup>

TJJD and DFPS are to coordinate and develop protocols for sharing with one another, upon request, any information necessary to identify and coordinate provision of services to youth and prevent duplication of services, to enhance rehabilitation, and to improve and maintain community safety.<sup>27</sup>

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## SEALING OF RECORDS

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If a juvenile record is sealed, the following happens:

1. the adjudication is vacated and the proceeding is dismissed and treated as if it had never occurred, unless the record is later unsealed as allowed by law;<sup>28</sup>

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<sup>22</sup> Because of the broad definition of service providers, to include schools and TEA, every child in the juvenile justice system is a multi-system youth.

<sup>23</sup> Texas Family Code §58.0052

<sup>24</sup> Texas Family Code §58.0053

<sup>25</sup> Texas Family Code §58.0052(b-2)

<sup>26</sup> Texas Family Code §58.0052(b-1), as added by HB 1521 (2017)

<sup>27</sup> Texas Family Code §58.0052(b-1), as added by HB 7 (2017)

<sup>28</sup> Texas Family Code §58.258(c)

2. all law enforcement, prosecuting attorney, clerk of court, juvenile court, and public or private agency or institution records ordered sealed must be stored in a manner accessible only to the custodian of records of the entity and written verification of that fact must be sent to the court within 60 days;<sup>29</sup>
3. all entities receiving a sealing order must reply “no record exists” in response to an inquiry in any matter;<sup>30</sup>
4. the juvenile is not required to state in any proceeding or application for employment, licensing, admission, housing, or other public or private benefit that he or she was ever a party to a proceeding in the juvenile system;<sup>31</sup>
5. the information in the record, the fact that the records once existed or the person’s denial of the existence of the records or the person’s involvement in a juvenile matter may not be used against the person in any manner, including in a perjury prosecution or other criminal proceeding, a civil proceeding (including an administrative proceeding involving a governmental entity), an application process for licensing or certification, or an admission, employment, or housing decision.<sup>32</sup>

The person who is the subject of the records is entitled to access the records for the purpose of preparing and presenting a motion or application to seal the records.<sup>33</sup>

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## NOT TRUE FINDING

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Prior to September 1, 2017, the law provided that if the child was found not true on all counts, the court was to immediately order the records sealed.<sup>34</sup> This provision was repealed via SB 1304 in 2017.

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## EXEMPTED RECORDS

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The following records are exempt from sealing:

1. records relating to a criminal combination or criminal street gang maintained by DPS or a local law enforcement agency under Chapter 61, Code of Criminal Procedure;
2. sex offender registration records maintained by DPS or a local law enforcement agency under Chapter 62, Code of Criminal Procedure; and
3. records collected or maintained by TJJD for statistical and research purposes.<sup>35</sup>

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<sup>29</sup> Texas Family Code §58.259

<sup>30</sup> Texas Family Code §58.259(c)

<sup>31</sup> Texas Family Code §58.261(a)

<sup>32</sup> Texas Family Code §58.261(b)

<sup>33</sup> Texas Family Code §58.007(b-1)

<sup>34</sup> Texas Family Code §58.003(d)

<sup>35</sup> Texas Family Code §58.252

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## GENERAL INFORMATION

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To be eligible for sealing under a particular provision, all of a juvenile's referred offenses must meet the criteria. For example, a juvenile adjudicated for a felony and two misdemeanors is not eligible for sealing without application due to the felony adjudication. However, a juvenile adjudicated for two misdemeanors and referred but not adjudicated for a felony may be eligible for sealing without application, depending on if the other criteria are met.

A sealing order is for all of the juvenile's records existing in the county or judicial district served by the court.

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## RECORDS ELIGIBLE FOR SEALING WITHOUT APPLICATION

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### DELINQUENT CONDUCT:

#### MISDEMEANORS (ADJUDICATED OR NOT) AND FELONIES (NOT ADJUDICATED ONLY)

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If a person was referred for a delinquent conduct misdemeanor, whether or not it was adjudicated or for a felony that was not adjudicated, the person is entitled to sealing at age 19 without applying to the juvenile court if the following criteria are met:

1. the person was never adjudicated for a felony;
2. the person has no pending delinquent conduct matters;
3. the person was never certified as an adult;
4. the person has no adult convictions of a felony or jailable misdemeanor; and
5. the person has no pending adult charges for a felony or jailable misdemeanor.<sup>36</sup>

### PROCESS

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DPS sends the probation department that submitted the records to JJIS a certification that the records appear eligible for sealing.

No later than the 60<sup>th</sup> day after receiving the certification, the probation department gives the court notice of the certification and a list of all referrals and outcomes relating the person.

If the juvenile probation department has reason to believe the records aren't actually eligible for sealing (for example, the probation department knows there is a pending juvenile matter, such as a post-18 certification, that was not reported to DPS), the juvenile probation department shall notify DPS within 15 days and the two entities should work together to ensure the DPS records are correct and updated if necessary. If the update results in the person not being eligible for sealing without application, no further action is taken. If after speaking with DPS, it is determined the person is in fact eligible for sealing without application, the juvenile probation department has 30 days to get the notice and list of referrals and outcomes to the court.

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<sup>36</sup> Texas Family Code §58.253



No later than 60 days after receiving the notice and list from the juvenile probation department, the juvenile court shall issue an order sealing the records.<sup>37</sup>

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### CONDUCT INDICATING A NEED FOR SUPERVISION

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If a person was referred to a juvenile probation department for conduct indicating a need for supervision and never referred for delinquent conduct, the person is entitled to have his or her records sealed at age 18 without applying to the juvenile court if the following additional criteria are met:

1. the person has no conviction of a felony as an adult; and
2. the person has no pending charges as an adult or a felony or a jailable misdemeanor.<sup>38</sup>

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### PROCESS

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TJJD will continue notifying probation departments each month of the records of a juvenile referred for only conduct indicating a need for supervision who has turned 18 years of age. The probation department will need to compare the notices to their own records and run a search of CJIS to determine if there are disqualifying adult convictions or pending charges. If it is determined the record is eligible for sealing, the juvenile probation department gives notice to the juvenile court along with a list of all referrals and outcomes.<sup>39</sup> The court shall issue an order sealing the records within 60 days.<sup>40</sup>

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### RECORDS ELIGIBLE FOR SEALING WITH APPLICATION

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#### APPLICABILITY

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Without regard to eligibility under Sections 58.253 and 58.255 (related to sealing without application), a person may file an application for sealing in the juvenile court served by the juvenile probation department to which the person was referred.

No fee may be charged for filing the application, regardless of the form of the application.<sup>41</sup>

The statute sets out what must be included in the application.<sup>42</sup>

The court may order sealing if the following criteria are met:

1. the person is at least 18 or, if younger than 18, at least two years must have elapsed after the date of the final discharge in each matter for which the person was referred;
2. the person has no pending delinquent conduct matters;
3. the person was not certified as an adult;
4. the person has not been convicted of a felony as an adult; and
5. the person has no pending charges as an adult for a felony or jailable misdemeanor.<sup>43</sup>

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<sup>37</sup> Texas Family Code §58.254(a)

<sup>38</sup> Texas Family Code §58.255(a)

<sup>39</sup> Texas Family Code §58.255(b)

<sup>40</sup> Texas Family Code §58.255(c)

<sup>41</sup> Texas Family Code §58.256(a)

<sup>42</sup> Texas Family Code §58.256(b)

A court may not order the sealing of the records of a person who:

1. received a determinate sentence;
2. is currently required to register as a sex offender (such a person may be eligible for sealing was the duty to register has expired); or
3. was committed to TJJD or Travis County's commitment program and is not yet discharged.<sup>44</sup>

The court may order the sealing without a hearing or may hold a hearing to determine whether or not to order the sealing. The court is not authorized to deny the application without a hearing.<sup>45</sup>

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## HEARING REGARDING SEALING OF RECORDS

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The hearing must be held no later than the 60<sup>th</sup> day after the court receives the application.

The court shall give notice of the hearing to:

1. the person who is the subject of the records;
2. the person's attorney who made the application, if there was one;
3. the prosecutor;
4. all entities named in the application that the person believes possess eligible records; and
5. any individual or entity whose present is requested by the applicant or prosecutor.<sup>46</sup>

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## ORDER SEALING RECORDS

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An order sealing records must include the information set out in statute.

No later than 60 days after entry of the order, the court shall provide a copy of the order to: DPS, TJJD (if committed), the clerk of court, the juvenile probation department; the prosecutor's office; each law enforcement agency having contact with the person in relation to the conduct that is the subject of the sealing order; each public or private agency that had custody of the or provided supervision or services to the person; and each official, agency, or other entity the court has reason to believe has any record containing information related to the conduct that is the subject of the sealing order.<sup>47</sup>

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<sup>43</sup> Texas Family Code §58.256(c)

<sup>44</sup> Texas Family Code §58.256(d)

<sup>45</sup> Texas Family Code §58.256(e)

<sup>46</sup> Texas Family Code §58.257

<sup>47</sup> Texas Family Code §58.258

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## ACTIONS TAKEN ON RECEIPT OF ORDER SEALING RECORDS

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### DPS

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Within 60 days of receipt of an order sealing records, DPS will:

1. limit access to the records to only TJJJ for the purpose of research and statistical studies;
2. destroy any other records in its possession, including DNA records; and
3. send the court written verification of the limitation and destruction.<sup>48</sup>

### TJJJ

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Within 60 days of receipt of an order sealing records, TJJJ will:

1. seal all records relating to the person, other than those maintained for statistical purposes; and
2. send written verification of the sealing to the issuing court.<sup>49</sup>

Records are considered sealed if they are not destroyed but are stored in a manner that allows access to the records only by the custodian of the records for the entity possessing the records.<sup>50</sup>

### JUVENILE PROBATION DEPARTMENT, PROSECUTOR, LAW ENFORCEMENT ENTITY, AND PUBLIC OR PRIVATE AGENCY HAVING CUSTODY OF OR PROVIDING SUPERVISION OR SERVICES TO JUVENILE

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Within 60 days of receipt of an order sealing records, the entity will:

1. seal all records relating to the person; and
2. send written verification of the sealing to the issuing court.<sup>51</sup>

Records are considered sealed if they are not destroyed but are stored in a manner that allows access to the records only by the custodian of the records for the entity possessing the records.<sup>52</sup>

### ANY OTHER ENTITY

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Within 60 days of receipt of an order sealing records, the entity will:

1. send all records relating to the person to the issuing court;
2. delete all index references to the person's records; and
3. send written verification of the deletion to the issuing court.<sup>53</sup>

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<sup>48</sup> Texas Family Code §58.259(a)(1)

<sup>49</sup> Texas Family Code §58.259(a)(2)

<sup>50</sup> Texas Family Code §58.259(b)

<sup>51</sup> Texas Family Code §58.259(a)(3)

<sup>52</sup> Texas Family Code §58.259(b)

<sup>53</sup> Texas Family Code §58.259(a)(4)

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## NO RECORDS EXIST

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If an entity receiving an order to seal records later receives an inquiry about a person or the matter contained in the records, the entity must respond that no records relating to the person or the matter exist.<sup>54</sup>

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## ADDITIONAL ACTIONS

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If the entity receiving the order is unable to comply because the information in the order is incorrect or insufficient to allow the entity to identify the records that are the subject of the order, the entity shall notify the issuing court within 30 days of receipt of the order. The court shall take any actions necessary and possible to provide the needed information to the entity, including contacting the person who is the subject of the order or the person's attorney.<sup>55</sup>

If the entity receiving the order has no records related to the person, the entity shall provide the issuing court with written verification of that fact no later than the 30<sup>th</sup> day after receiving the order.<sup>56</sup>

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## INSPECTION AND RELEASE OF SEALED RECORDS

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A juvenile court may allow, by order, the inspection of sealed records only by:

1. the person named in the order, on petition of the person who is the subject of the records;
2. a prosecutor, on the prosecutor's petition, for the purpose of reviewing the records for possible use in a capital prosecution or enhancement of punishment under Section 12.42, Penal Code; or
3. a court, TDCJ, or TJJD for the purposes of Art. 62.007(e), Code of Criminal Procedure, related to risk assessment for person required to register as a sex offender.

After a petitioner inspects the records, the court may order the release of any or all of the records to the petitioner on the motion of the petitioner.<sup>57</sup>

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## EXPUNCTION

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Juvenile court records are not subject to an order of expunction issued by any court.<sup>58</sup>

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<sup>54</sup> Texas Family Code §58.259(c)

<sup>55</sup> Texas Family Code §58.259(d)

<sup>56</sup> Texas Family Code §58.259(e)

<sup>57</sup> Texas Family Code §58.260

<sup>58</sup> Texas Family Code §58.265

# JUVENILE JUSTICE INFORMATION SYSTEM

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The Juvenile Justice Information System (JJIS) is a computerized database maintained by DPS that serves as the record creation point for juvenile justice information maintained by the state and for the entry of records into the FBI database. Information in JJIS is subject to sealing and, unlike adult records, is not public. It may be accessed only as provided by state law.

JJIS includes only information relating to delinquent conduct that would be a criminal offense other than a fine-only offense if committed by an adult. Conduct indicating a need for supervision is not recorded in JJIS. Records of municipal and justice courts related to children receiving citations are not recorded in JJIS.<sup>59</sup>

The juvenile board, juvenile justice agency, and clerk of the juvenile court are responsible for providing the necessary information to DPS.<sup>60</sup>

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## CONFIDENTIALITY - GENERALLY

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The information in JJIS is confidential and for DPS' use. DPS may provide information in JJIS only to:

1. the military, with permission of the juvenile offender;
1. a criminal justice agency as defined by Section 411.082, Government Code;
2. a noncriminal justice agency authorized by federal statute or federal executive order to receive juvenile justice record information;
3. a juvenile justice agency;
4. TJJD;
5. the Office of Independent Ombudsman of the Texas Juvenile Justice Department;
6. a county, justice, or municipal court exercising jurisdiction over a juvenile; and
7. DFPS for background check purposes for licensing, employment, volunteers, and placement per Government Code Section 411.114.

Information shared retains its confidential nature and can be shared by the recipient only if allowed by Title 3, Family Code. The information that DPS may share is only the information in JJIS; DPS is not authorized to share the underlying document that contained the information.<sup>61</sup> Licensing entities are not authorized to access information in JJIS.

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<sup>59</sup> Texas Family Code §58.104(a)

<sup>60</sup> Texas Family Code §§58.105 and 58.108

<sup>61</sup> Texas Family Code §58.106(a)

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## INFORMATION IN JJIS

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JJIS contains information relating to:

1. the juvenile;
2. the intake or referral of the juvenile into the juvenile justice system;
3. the detention of the juvenile;
4. the prosecution of the juvenile;
5. the disposition of the juvenile's case, including the name and description of programs to which the juvenile is referred;
6. the probation or commitment of the juvenile; and
7. the termination of probation supervision or discharge from commitment of the juvenile.<sup>62</sup>

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## DESTRUCTION OF RECORDS

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### NO REFERRAL

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If a child is not referred to juvenile court on or before the 10<sup>th</sup> day after being taken into custody, the law enforcement agency must destroy all information, including photographs and fingerprints, relating to the child. If the child is placed in a first offender program under Family Code §52.031 or on informal disposition under Family Code §52.03, destruction is not required until after completion of the informal disposition or until the 90<sup>th</sup> day after successful completion of the first offender program.<sup>63</sup>

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### NO PROBABLE CAUSE

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The court must order the destruction of records, including records in JJIS, if:

1. intake determines there is no probable cause and the case is not forwarded to a prosecutor; or
2. upon referral to the prosecutor, the prosecutor determines there is no probable cause.<sup>64</sup>

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### PERMISSIBLE DESTRUCTION (i.e. SPRING CLEANING)

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Physical records, including entries in a computer file or information on microfilm, microfiche, or other electronic storage media, may be destroyed if criteria are met. This destruction method is an option for records custodians; it is not a sealing provision and there is no authority for a juvenile to request it.

This type of destruction does not result in the removal of the records from JJIS.

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<sup>62</sup> Texas Family Code §58.104(a) – more specific information is listed in §58.104(b)

<sup>63</sup> Texas Family Code §58.001(c); Law enforcement may maintain information after the 90<sup>th</sup> day but only to determine eligibility to participate in a first offender program.

<sup>64</sup> Texas Family Code §58.263

If the record or file contains information regarding more than one juvenile case, the information may only be destroyed if it can be separated from information not authorized to be destroyed.<sup>65</sup>

Converting the physical records to electronic records and destroying the physical records while maintaining the electronic records is not considered destruction of a record. In such instance, however, the electronic records may be destroyed only in compliance with the statute.<sup>66</sup>

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## JUVENILE PROBATION DEPARTMENT RECORDS

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If ordered by the juvenile board, physical records may be destroyed as follows:

1. most serious alleged or adjudicated conduct is CINS and the person is at least 18;
2. no action was taken because the referral did not relate to CINS or delinquent conduct and the person is at least 18;
3. most serious conduct adjudicated was a misdemeanor and the person is at least 21;
4. misdemeanor or felony conduct was alleged but there was no adjudication and the person is at least 21; or
5. there was a felony adjudication and the person is at least 31.<sup>67</sup>

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## LAW ENFORCEMENT AGENCY RECORDS

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Physical records of a law enforcement agency may be destroyed under same rules as juvenile probation department records. Destruction is allowed only if ordered by the head of the agency.

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## PROSECUTING ATTORNEY'S OFFICE RECORDS

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Physical records of the prosecuting attorney's office may be destroyed under the same rules as juvenile probation department records. Destruction is allowed only if ordered by the prosecuting attorney.

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## COURT RECORDS

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Physical copies of court records may be destroyed only *after* they have been duplicated in a computer file, on microfilm or microfiche, or in any other electronic storage medium. The electronic records may not be destroyed. If never converted to electronic format, the physical court records may not be destroyed.<sup>68</sup>

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<sup>65</sup> Texas Family Code §58.264(c)

<sup>66</sup> Texas Family Code §58.264(e)

<sup>67</sup> Texas Family Code §58.264(b)

<sup>68</sup> Texas Family Code §58.264(f)

# FREQUENTLY ASKED QUESTIONS<sup>69</sup>

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## What records to the new laws apply to?

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The new laws apply to records created before, on, or after September 1, 2017.

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## How will a juvenile probation department know a person's records are eligible for sealing without application?

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If the juvenile was referred for delinquent conduct, DPS will send notice to the juvenile probation department when the criteria for sealing without application are present.

TJJD will continue sending a monthly notice of juveniles who have turned 18 years of age who were referred to the probation department for conduct indicating supervision but not delinquent conduct. The probation department should compare this list to their own records and should also run a check in CJIS to determine if the person has any adult cases that render him or her ineligible for sealing without application.

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## Is there a requirement to run a check of DPS records after receiving the certification from DPS?

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No. The certification indicates the person is eligible for sealing according to DPS' records. However, a probation department may become aware of an error in those records when preparing the list of referrals and disposition outcomes for the court. If this occurs, the probation department is to contact DPS to ensure DPS' records are correct.

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## Is there a requirement to check other states' records to determine eligibility?

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No. The eligibility standards have long been based on Texas records only; the new statute did not add language that would indicate an intent to change this.

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## Is a juvenile entitled to sealing without application if adjudicated for a felony?

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No. Juveniles adjudicated for a felony are not eligible for sealing without application. They are, however, eligible to apply for sealing, assuming the other criteria is present.

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<sup>69</sup> These questions and answers reflect the author's interpretation of the law and are provided as technical assistance but do not constitute legal advice. We recognize there may be other interpretations.



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## If a juvenile was given certified as an adult or given a determinate sentence, is he or she eligible for sealing?

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No. Juveniles certified as adults or given a determinate sentence are not eligible for sealing.

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## If a juvenile is required to register as a sex offender, is he or she eligible for sealing?

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As long as the duty to register exists, the juvenile is not eligible for sealing. Once the duty to register has expired, the juvenile is eligible to apply for sealing.

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## If a juvenile is committed to TJJD, is he or she eligible for sealing?

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A juvenile committed to TJJD is eligible for to apply for sealing after the juvenile has been discharged from TJJD. This criterion is also applicable to a juvenile committed to Travis County's commitment program.

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## When may a juvenile apply for sealing? Is an attorney required? Is there a filing fee?

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A juvenile may apply for sealing at age 18. A juvenile may apply for sealing before age 18 if at least two years have passed since the final discharge in every juvenile matter. An attorney is not required for an application for sealing. Courts and clerks may not charge a fee for filing an application for sealing, no matter what form that application is in.

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## Is sealing case by case or for the entire record?

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Sealing is for the entire record of juvenile matters that occurred in that county or judicial district. Juveniles with records in multiple counties may be subject to multiple sealing orders.

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## What if there is no cause number because the case was handled informally?

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The Juvenile Justice Reporting Form [CR43-J] creates a statewide record after contact event information is sent to the Department of Public Safety for inclusion in the JJIS. Many cases handled non-judicially (i.e. informal cases) may not have a cause number, but should be sealed. A new cause number associated with the sealing order is recommended.

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## Was the provision of law requiring sealing on a not true finding removed?

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Yes. This was likely inadvertent and we are hopeful it will be revisited next session.

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## Were the provisions of law allowing sealing after completion of certain programs removed?

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Yes. The workgroup discussed this at length and it was determined that this information is important for probation departments and others to have available while a person is of juvenile age to give a complete picture of services already received in order to ensure that appropriate services are used for juveniles and sealing the records meant this information was not available. Records are protected prior to sealing because they may only be provided to limited entities as allowed in Section 58.106, Family Code.

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## Can the court still seal on its own motion?

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No. This provision of law was removed.

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## Can the court order destruction at the same time it orders the records sealed?

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No. Court-ordered destruction is only available when there is a finding of probable cause by intake or the prosecutor. However, juvenile probation departments, prosecutors, and law enforcement entities may destroy records under the “spring cleaning” provisions of Section 58.264. Any of those entities could choose to implement procedures that allow for destruction of eligible records when the entity receives a sealing order. For example, records for juveniles referred only for conduct indicating a need for supervision are entitled to be sealed at age 18; those records are also eligible for permissible destruction by the probation department, prosecutor, and law enforcement at age 18. Any of these entities could create a policy that allows for destruction of those records on receipt of the sealing order, provided destruction is also permissible under their records retention schedule. Similar procedures could be implemented for older cases that will be sealed under the new sealing without application law.

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## Which court seals when it is an inter-county transfer (ICT) case?

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The county that receives the certification from DPS should seal and send the order to the other county.

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## Are sample sealing orders available?

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The Juvenile Law Section of the State Bar of Texas has created sample sealing forms, available at [www.juvenilelaw.org](http://www.juvenilelaw.org). Local attorneys should review and update the documents for legal sufficiency and local drafting preferences.

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## Is there an updated brochure that may be provided to juveniles regarding sealing?

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TJJD has opted to prepare a document rather than a brochure that may be provided to juveniles. It is available on TJJD’s website.