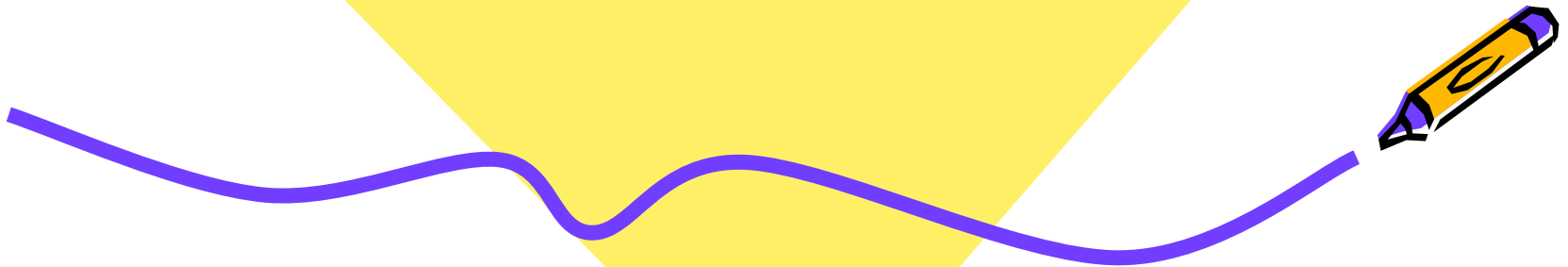


Access to and Confidentiality of Juvenile Records





Presented by
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Gregg Co. DA's Office
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(903) 237-2526



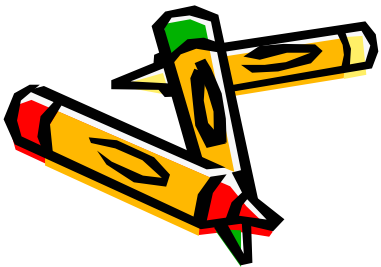
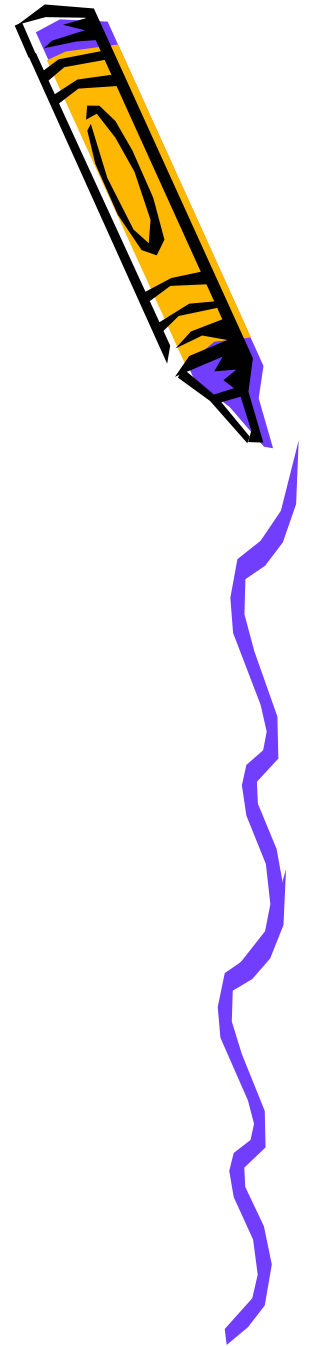
With special thanks to Kris Moore & Sylvia Latapie



First we have to know
what juvenile records
really are.



Records of juvenile
offenders and juvenile
proceedings under the
Juvenile Justice Code
sections of the Texas
Family Code

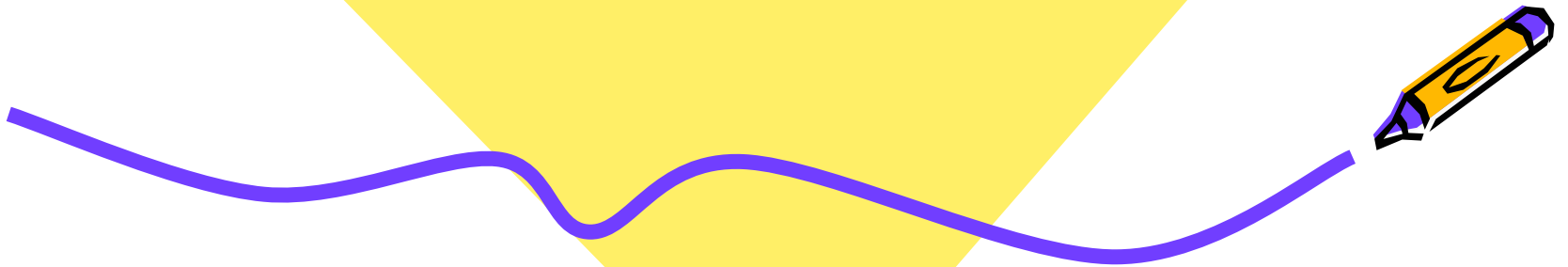


- They are not:
 - Records of child victims in non JJC cases
 - Records of child witnesses in non JJC cases
 - Motor vehicle records
 - Records in JP and Municipal Courts
 - Records of children under the age of 10
 - Records of children over the age of 17 unless for an offense that occurred before the child's 17th birthday or a proceeding under the Juvenile Justice Code





Where does it says we
can't share them ?



58.007 Texas Family Code



- Applies to Court, Probation & DA files
- Open for inspection only by:
 - Juvenile Court Judge
 - Juvenile Probation Officers
 - Professional Consultants/Staff of Court
 - Juvenile Justice Agency
 - Attorney for Party
 - Agency providing supervision



» Or with leave of the JUVENILE Court for others having a legitimate interest



58.007 Texas Family Code



- Applies to Law Enforcement files
 - May not be disclosed to public
 - Must be maintained locally unless
 - Being collected for JJIS
 - Child is transferred from TYC to TDCJ
 - Being forwarded to a Juvenile Justice Agency under 58.101 TFC or Criminal Justice Agency under 411.082 Texas Gov. Code
 - Being forwarded to TCIC or NCIC for the purpose of locating a missing child

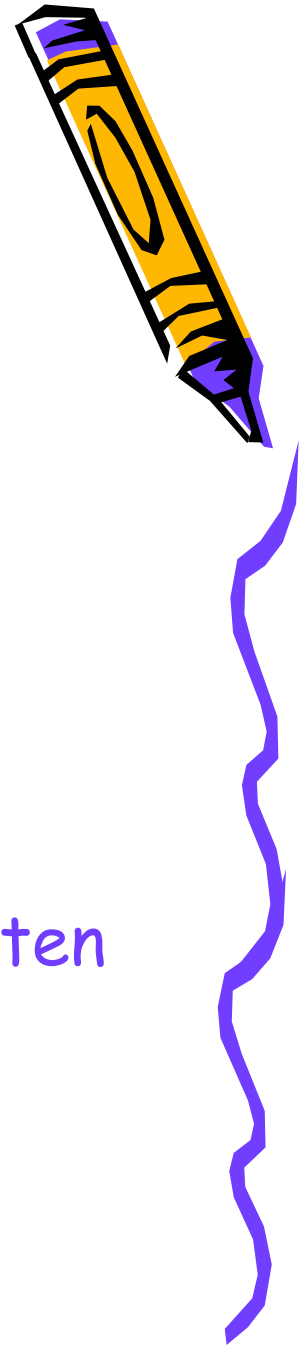


58.005 Texas Family Code

- Applies to files of agencies providing treatment, supervision and/or custody
- MAY be disclosed to:
 - Juvenile Judge and consultants/staff
 - Juvenile probation officers
 - Professional consultants/staff of agency
 - Government agencies as required by law
 - Attorney for child
 - Treating person or entity if there is a written confidentiality agreement
 - TDCJ or TYC



» Or with permission of the JUVENILE Court



58.003 TFC - Sealing

- On its own motion or by application of the child, Court may order that certain records be sealed, after reasonable notice is given to agencies having records
- Court SHALL seal record if:
 - Two years since final discharge on non felony offense or any charge that was not adjudicated and
 - No adjudication/conviction on any charge since and no action is pending or
 - Child was found not guilty
- » Court MAY seal record of any case that was not adjudicated at any time after final discharge



58.003 TFC - Sealing

- Court *MAY* seal record if:
 - Felony offense
 - Person is now at least 21
 - Person was not transferred to adult court
 - Records have not been used as punishment evidence in adult court
 - Person has not been convicted of a felony after becoming 17



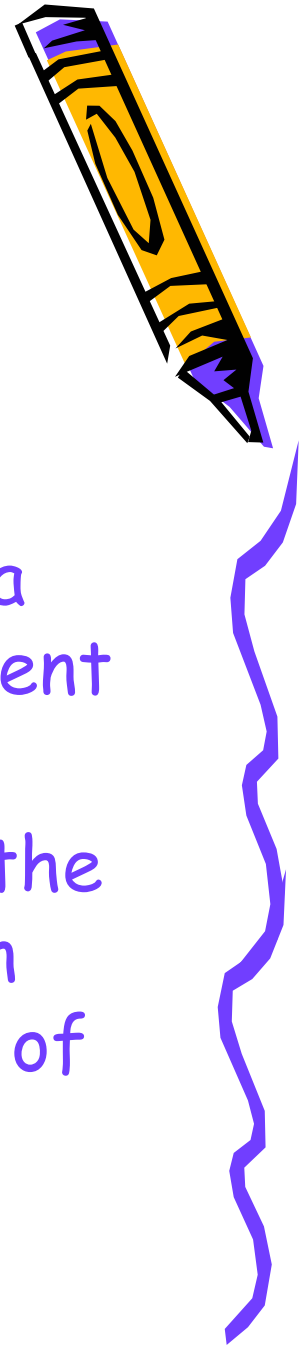
58.003 TFC - Sealing

- Court CAN NOT seal record for:
 - Any Determinate Sentencing
 - Sex offender records while there is a continuing duty to register
- Court can order actual destruction if:
 - Case is not a felony or Class B or above
 - Person is 21, and
 - No conviction of a felony since



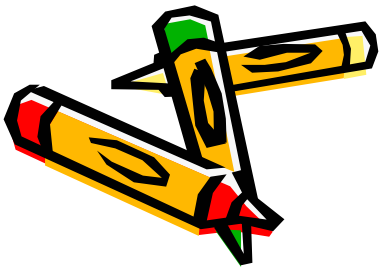
58.003 TFC - Sealing

- Once sealing order has been signed all agencies have 60 days to send records to clerk
- All indexing records must be deleted and a verification of the deletion must also be sent within 60 days
- If order is incorrect, agency must notify the Court within 60 days and the Court is then obligated to notify person or his attorney of the inability to seal



58.003 TFC - Sealing

- Records can be unsealed if:
 - Juvenile petitions and receives consent of Court
 - Prosecution petitions Court for purposes of punishment in adult cases
 - DPS makes "request" to Court for processing concealed handgun applications



58.003 TFC - Sealing

- Affect of sealing
 - Answer to inquiry to the agency regarding records should be that no records exists
 - Person is no longer required to say on application that there was an adjudication and that statement can not be used against them in any civil or criminal proceeding



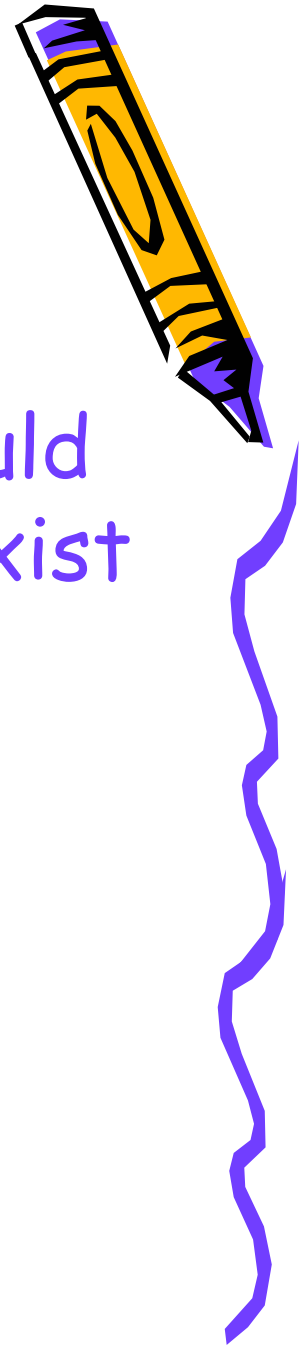
58.203 TFC - Certification

- DPS "certifies" to Court or probation department that the following conditions have been met and that records are subject to automatic restricted access
 - Person is 21 or older
 - Person has not been the subject of a Determinate Sentencing or Certification
 - Since the age of 17, person has not received a report of a deferred or conviction for a class B or better offense



58.204 TFC - Restricted Access

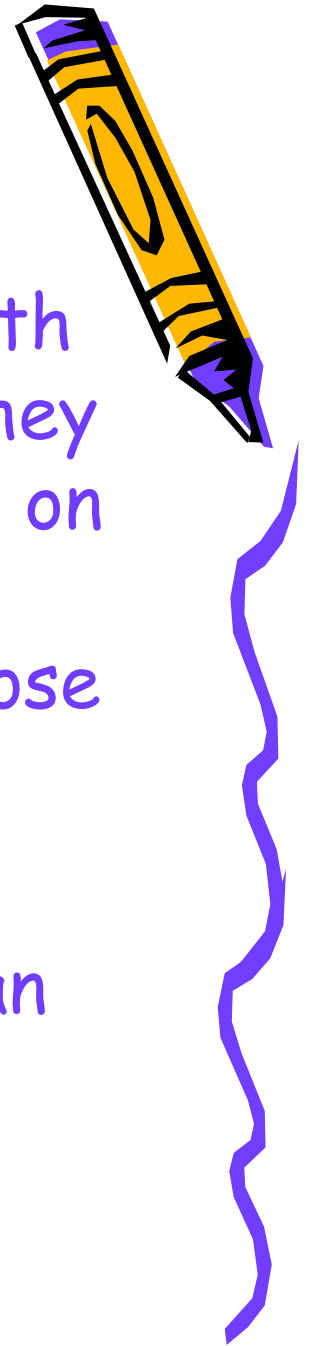
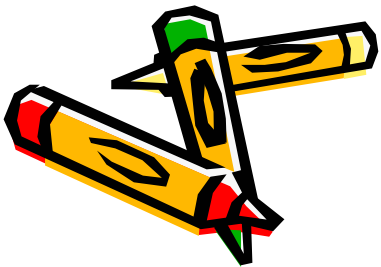
- Once records have been “certified” agencies with records on inquiry should indicate that information does not exist except to:
 - A criminal justice agency for a criminal justice purpose under 411.082 TGC
 - TJPC, TYC or CJPC for research and statistical purposes



58.206 TFC - Effect of Certification

A person who is the subject of records with restricted access is not required to say they have been a party to a juvenile proceeding on any application and that person can not be punished for such unless required to disclose by other criminal proceeding

Restricted access and its consequences can NOT be waived



Texas Attorney General Opinions

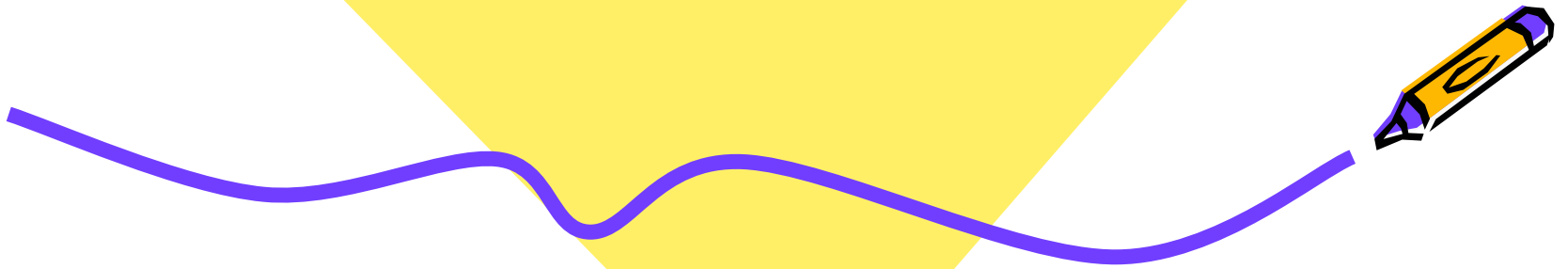


- No access to juvenile offender cases under PIA/Open Records
 - Not detention records OR 2001-3866
 - Not with names redacted OR 2001-6133
 - Not if its your child OR 2001-4279
 - Not if its your child and you made the report OR 2001-4486
 - Not even if you are the child OR 2001-5316
 - Not if the juvenile is deceased OR 2001-3350
 - Not for CPS OR 2001-4788
 - Not for school districts OR 2001-0680



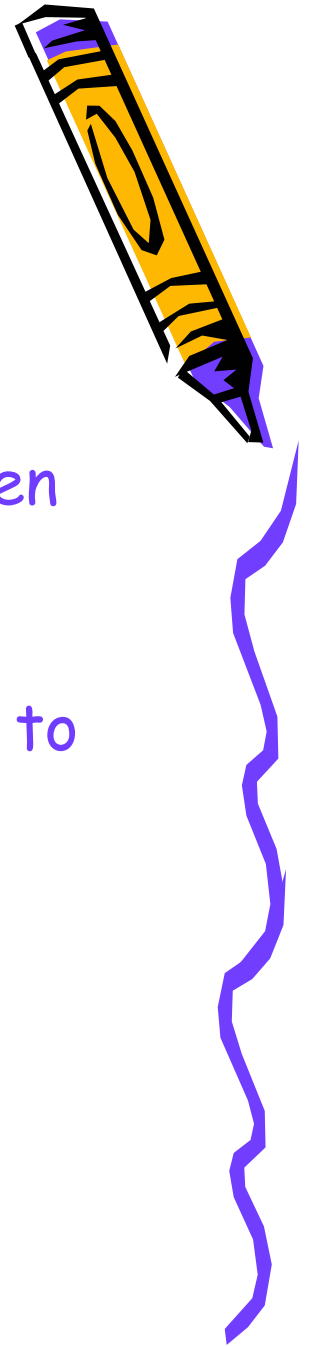
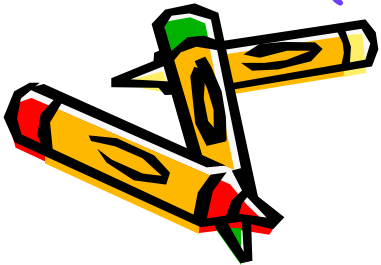


When can we share ?



Sharing with Schools

- 58.0051
 - Allows school superintendent and juvenile probation department to enter into a written agreement to share information regarding juvenile offenders
 - Must relate to the juvenile system's ability to serve the needs of the child PRIOR to adjudication
 - Must certify that information will not be shared except with juvenile justice agency (FERPA compliance)



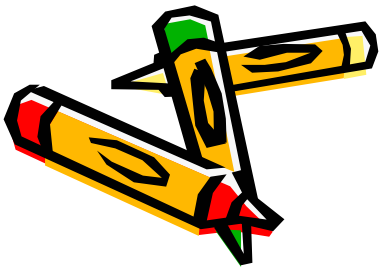
Sharing with Schools

- 15.27 Code of Criminal Procedure
School Notice Letters
 - Requires notice to schools of actions taken within juvenile justice system
 - Applies to all felony offenses, drug and weapon offenses and certain misdemeanors
 - Police agencies notify when taking child into custody
 - DA's Offices notify when case is adjudicated or deferred
 - Probation Department notify if transferring schools during term of probation



Sharing with the Public

- 58.007 (h) TFC
 - Allows Juvenile Court to release, to the public, information on juveniles that can not be located under a directive to apprehend or arrest warrant including:
 - Juvenile's name
 - Physical description
 - Photograph
 - Offense Committed



Sharing with the Public

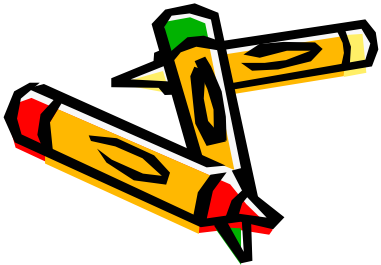
- 58.007 (i) TFC

Allows Juvenile Probation Department to release information contained in its records without leave of the Juvenile Court if guidelines have been adopted by the Juvenile Board



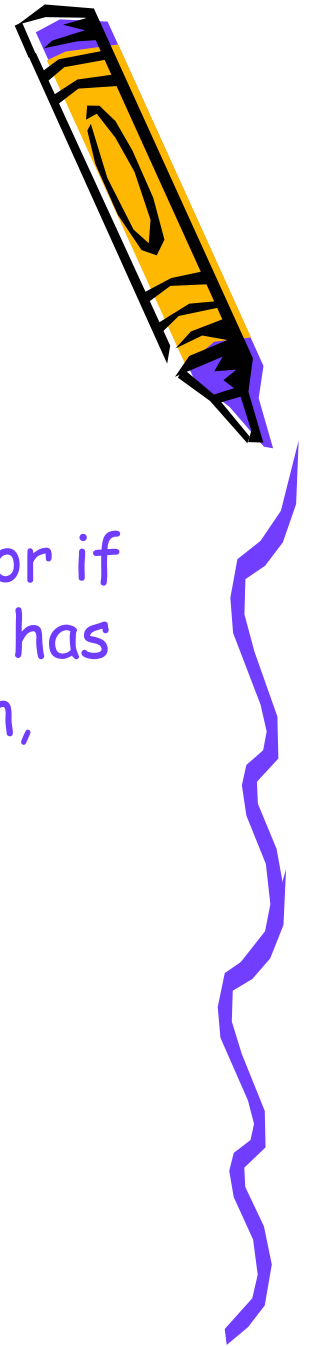
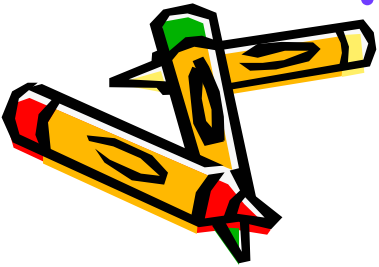
Sharing with the Public

- 58.106 (a) TFC
 - JJIS information may not be released except to:
 - Military with juvenile's permission
 - Person or entity granted permission by law under 411.083 TGC
 - Juvenile Justice Agency
 - Criminal Justice Policy Council, TYC or TJPC for analytical purposes



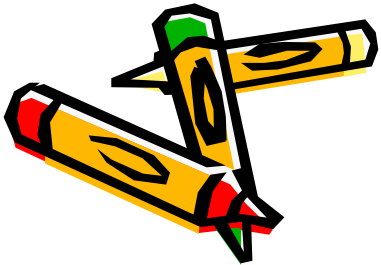
Sharing with the Public

- 58.106 (d) TFC
 - Allows DPS to release to the public JJIS information on juveniles that have escaped from TYC or a secure correctional facility or if a directive to apprehend or arrest warrant has been issued for an offense against a person, including:
 - Juvenile's name
 - Physical description
 - Photograph
 - Offense Committed



Sharing with the Public

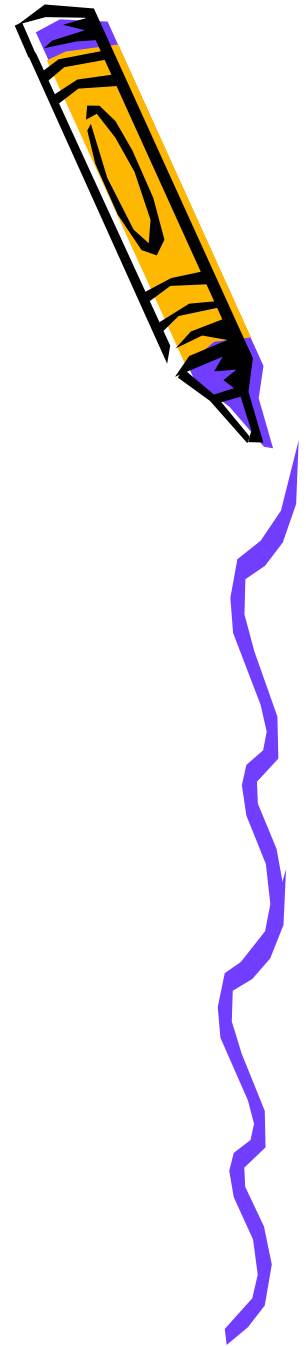
- 54.08 TFC (Not So) Public Hearings
 - Judge has discretion to open or close hearings even if a Determinate Sentencing on a showing of good cause
 - Hearings for those under 14 are closed unless the interest of the child or the public is better served for them to be open
 - Victims and their families can not be excluded unless:
 - They are witnesses AND
 - Testimony would be materially affected



Sharing with the Public

- 54.11 (f) TFC Public Hearings

Hearings to transfer jurisdiction to criminal court are open to the public unless waived by child and attorney



Sharing with the Public

- 42.016 and Chapter 62 CCP

Sex Offender Registration

- Unless ordered otherwise juvenile sex offender registration is public information which is displayed on the DPS website
- Registration is required for ten years after child leaves the system
- Sex offender registration is not affected by sealing or destruction statutes as long as the duty to register continues



Sharing with the Public

- 62.14 CCP

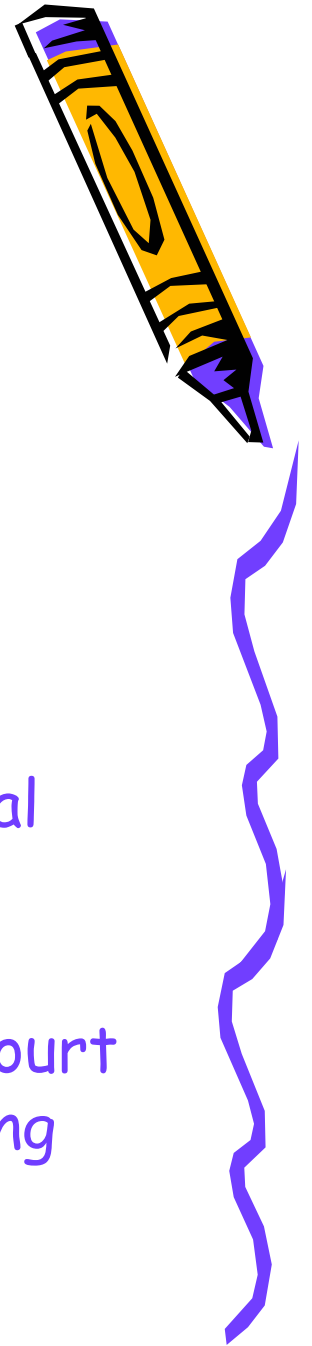
Removal of Registration Information

- NOT AUTOMATIC
- Once duty to register has ended, upon request, DPS must remove information from the registry
- At renewal, agency should determine if duty to register still exists and if not to remove all information from their files
- DPS should notify others who were supplied registration info that removal is appropriate



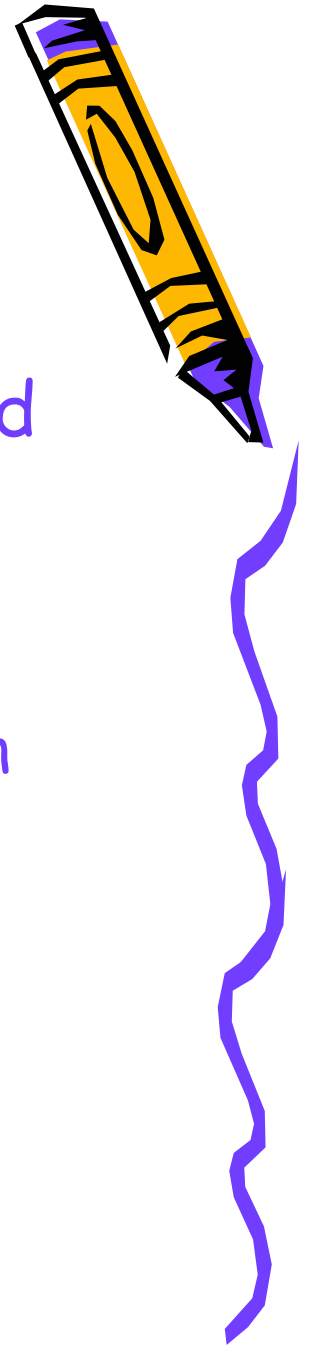
Sharing with the Victim

- 54.033 TFC
 - Mandates STD, HIV & AIDS testing for offenders adjudicated for:
 - Indecency (F2)
 - Sexual Assault
 - Agg. Sexual Assault
 - Results should be made available to the local health authority and they are required to notify the victim(s)
 - If child or parent refuses to comply, the Court shall order the child to submit to the testing



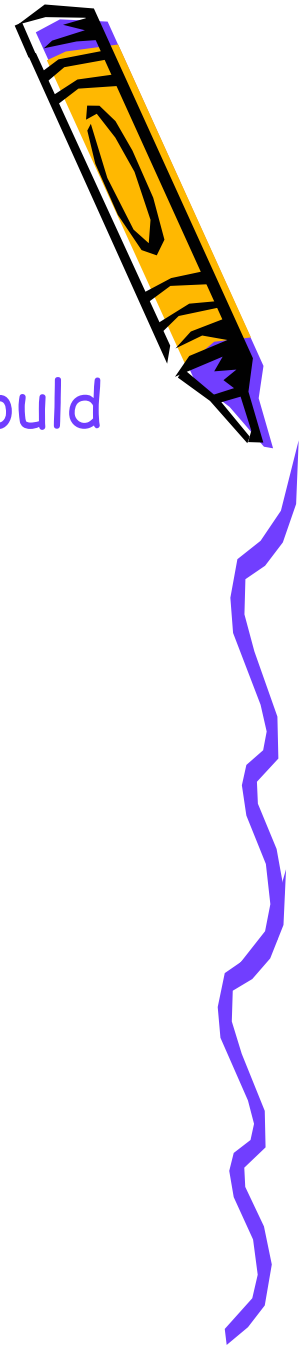
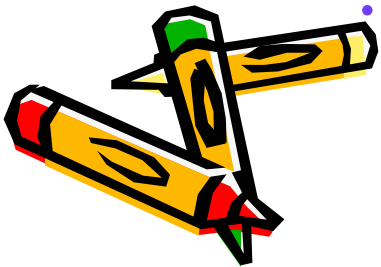
Sharing with the Victim

- 57.002 TFC - Victim's Rights
 - Victims have the right to be informed of:
 - Relevant Court proceedings
 - General procedures
 - Crime Victim's Compensation information
 - Notification of release from detention
 - Notification of release on probation
 - Notification of release onto parole
 - Parole procedures



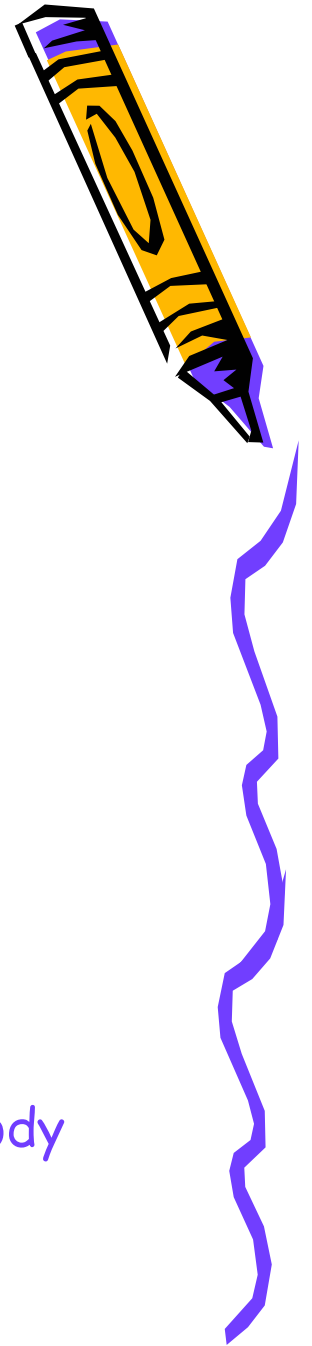
Sharing with the Victim

- 57.0031 TFC - Notification Rights
 - At initial contact probation department should provide the victim with written notice of:
 - Emergency services information
 - Right to receive crime victim's compensation
 - Name, address and phone number of Victim's Coordinator
 - Statement of Rights of Victim
 - Summary of each stage of proceedings
 - Steps to take if subjected to retaliation
 - Case number and Court assignment
 - Statement of right to file victim's impact



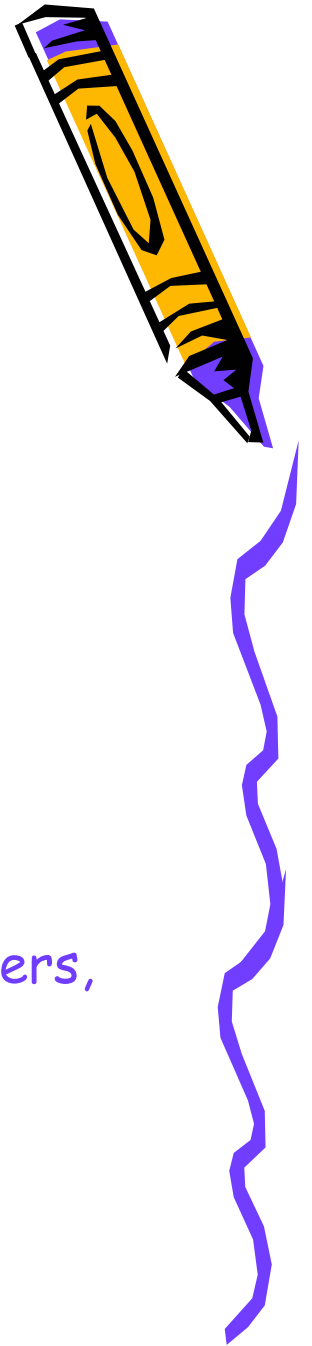
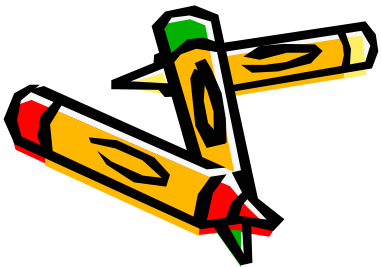
Sharing with Parents

- Chapter 61 TFC
Parental Rights and Responsibilities
 - Under 61.102 Parents are entitled to know
 - Date and time of offense
 - Date and time of custody
 - Offense and penalty category
 - Use of weapon
 - Property taken or damaged
 - Physical injuries to victim
 - Gang involvement
 - Use of alcohol or drugs
 - Names of those with child when taken into custody



Sharing with Parents

- 54.01 Detention Hearings
 - 54.02 Waiver and Transfer Hearings
 - 54.04 Disposition Hearings
 - 54.05 Modification Hearings
- Each requires only access to (not a copy of) written materials for attorney for the child and allows for restriction from parent or child
 - Each requires only that CHILD be given copy of orders, except 54.01 which includes the parent if they are required to engage or refrain from certain conduct



Sharing with Law Enforcement

- 58.001 TFC

Juvenile Justice Information System

- Created a statewide juvenile database for juvenile offenders
- Information is collected at time of arrest, intake and adjudication/disposition
- Fingerprints are maintained to allow for comparison



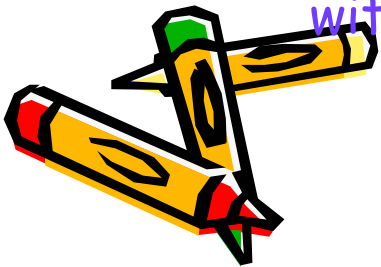
Sharing with Law Enforcement



- Chapter 61 CCP

Gang Records

- Information relevant to the identification of individuals involved in organized criminal activity
- Must be based evidence of two or more of the following:
 - Admission of involvement
 - ID by reliable informant
 - ID that is corroborated
 - Frequenting known gang areas
 - Association with known gang members
 - Use of gang identifiers
 - Arrest with other gang members for offenses consistent with gang activity



Sharing with Law Enforcement



- Chapter 61 CCP

Gang Records

- Not for public release, only for other law enforcement and the Courts
- Is subject to review on request of child or parent if child is not in TYC or TDCJ
- Must be removed if child has not been taken into custody or arrested in a two year period



Sharing with Law Enforcement

- 54.0405 (a)(2)(B) TFC
DNA Database

Requires juveniles placed on probation for a registration offense to submit a blood sample to DPS for the purpose of DNA comparison



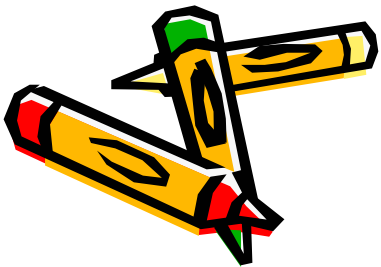
Sharing with Law Enforcement

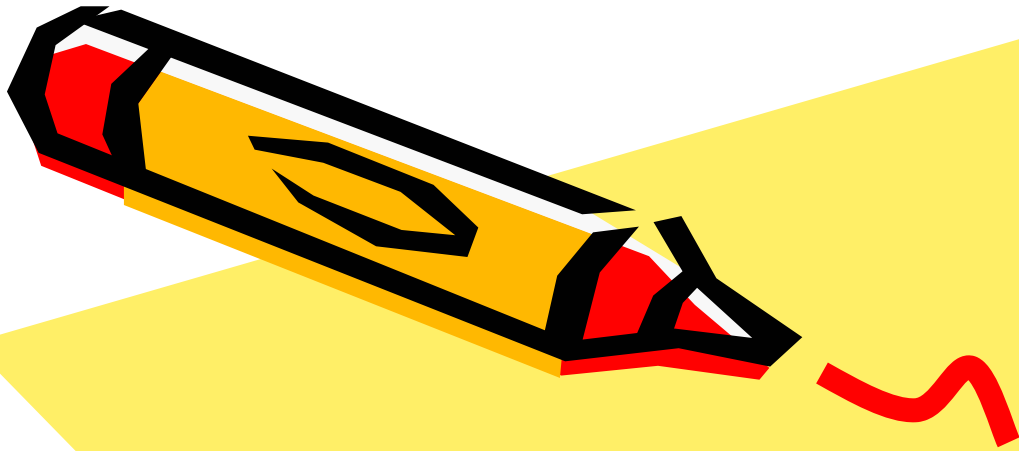


- 54.0406 TFC

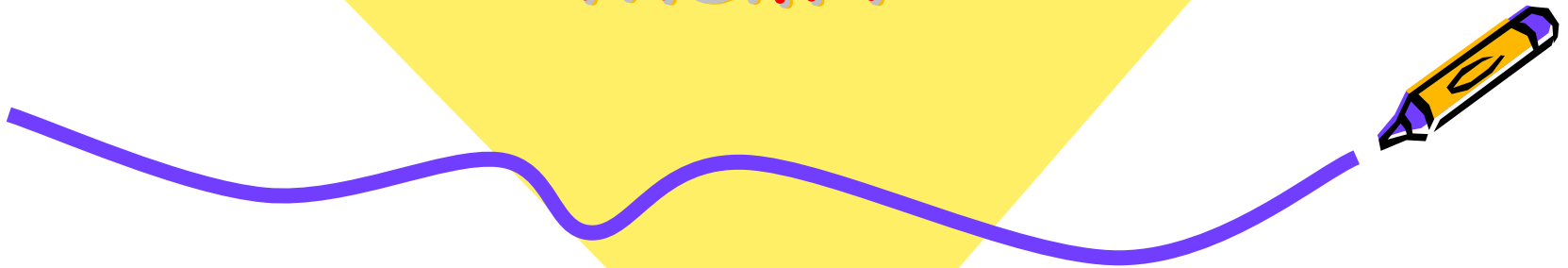
- Offenses Involving Handguns

- On or before the 30th day after being placed on probation for an offense involving a handgun, the child is required to inform his probation officer the manner of the acquisition of the weapon including
 - Date
 - Place
 - Others persons involved
- The probation officer is then required to notify local law enforcement of the information





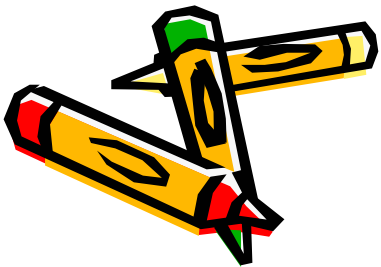
Now that we have them
what do we do with
them ?



And for how long !

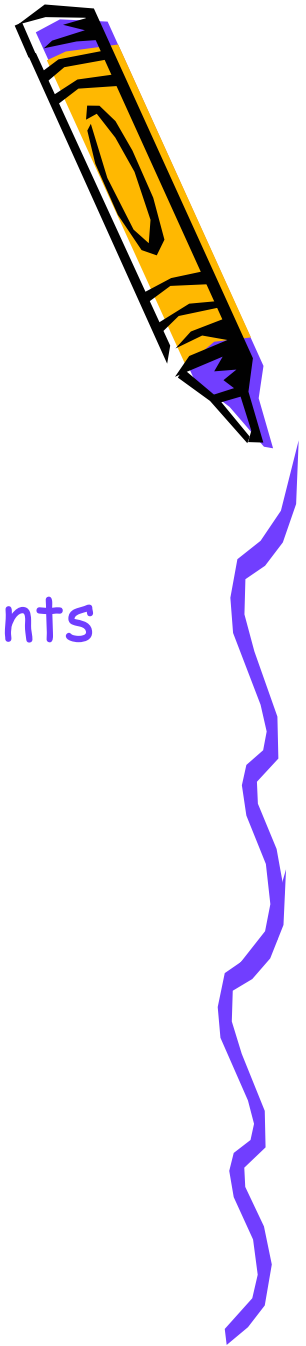
Juvenile Record Keeping

- 58.007 TFC
 - Requires that records maintained on paper or microfilm be kept separate from adult files
 - Records maintained on computer must be kept under different controls than adult files



Juvenile Record Keeping

- 58.0071 TFC
The Spring Cleaning Act
 - With approval by:
 - The Juvenile Board for probation departments
 - The Chief for law enforcement agencies
 - The elected DA for DA's offices
 - Juvenile records may be destroyed if:



Juvenile Record Keeping

Person is 18

CINS offense with or without adjudication

Offense was not CINS or delinquent and no action was taken

OR

Person is 21

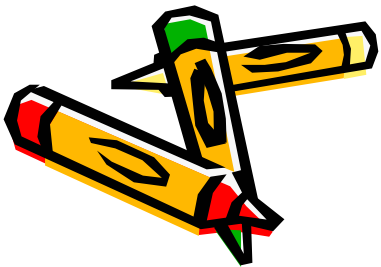
Misdemeanor offense with or without adjudication

Offense was felony but no adjudication

OR

Person is 31

Felony offense with adjudication

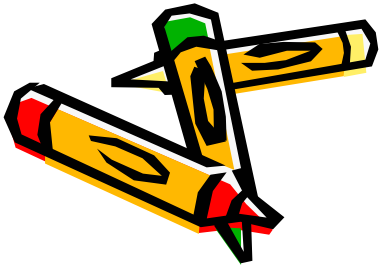


Juvenile Record Keeping



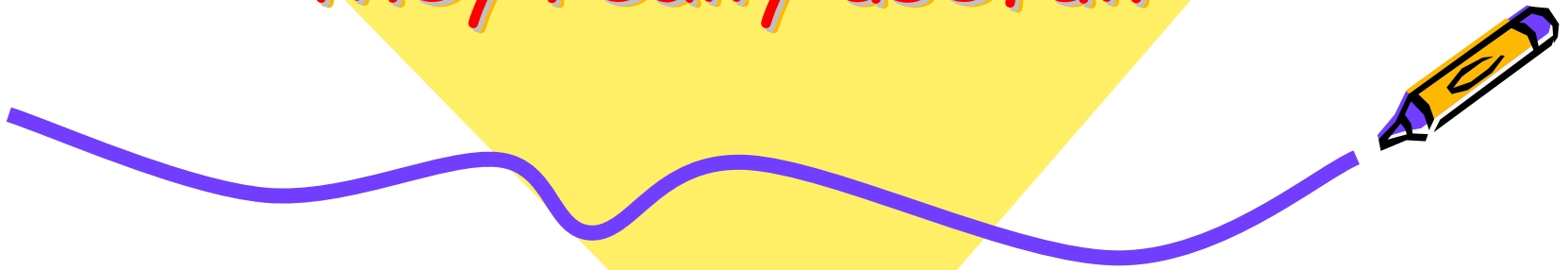
Court's files can not be destroyed unless placed on microfilm or other means of electronic storage

This is NOT a mandatory sealing statute but merely an opportunity to clean our attics



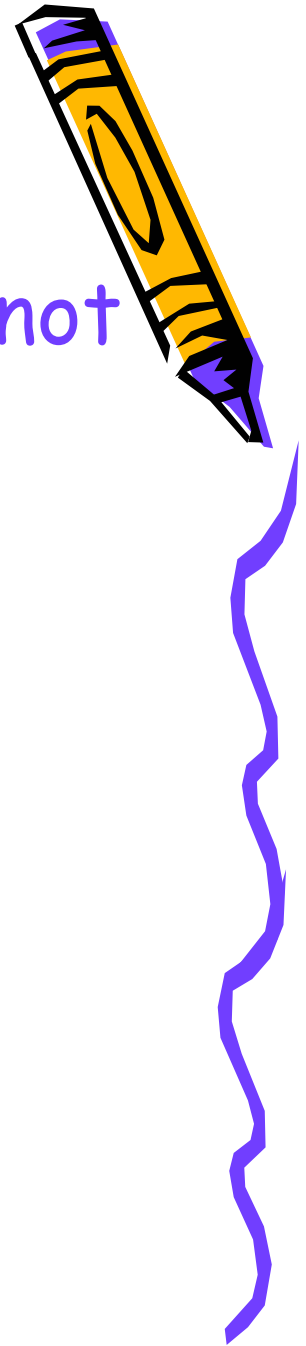


Now that they are taking
up so much space, are
they really useful?



Using Juvenile Records

- Remember that an adjudication is not a conviction and carries with it no civil disabilities (51.13 TFC)
- Unless specifically indicated an adjudication can not be used as an adult conviction would be



Using Juvenile Records

- In the Guilt/Innocence Phase
 - Impeachment Evidence
 - 609 speaks specifically of use of a CONVICTION for felony or misdemeanor of moral turpitude
 - Special subsection for use in juvenile hearings
 - May be used in certain instances to show bias, prejudice or motive in testifying for the State
 - Character Evidence
 - Case law indicates that witness can be questioned about whether a person was arrested not just "convicted"



Using Juvenile Records

- In the Punishment Phase - 37.07 CCP
 - Adjudicated Offenses
 - Speaks specifically about the use of ADJUDICATED offenses
 - Unadjudicated Offenses
 - Allows for evidence of an extraneous crimes or bad acts shown beyond a reasonable doubt committed by the defendant for which he could be held criminally responsible

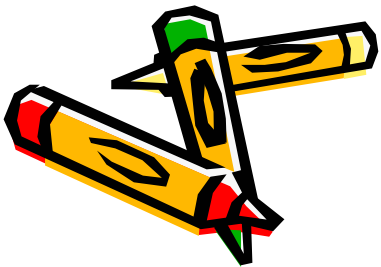
Don't forget to ask for or give notice



Using Juvenile Records

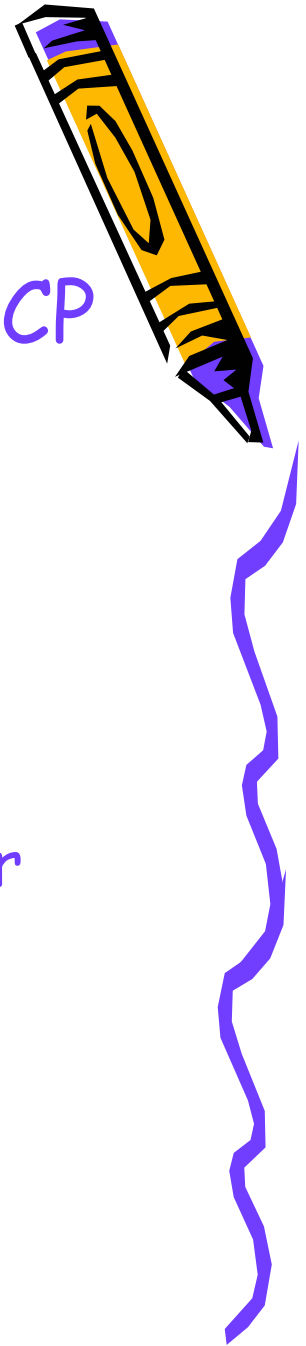
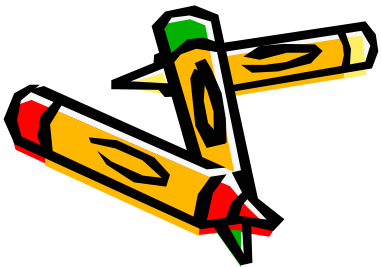
- In the Punishment Phase - 37.07 CCP
- Enhancements

51.13 specifies that felony offenses that occurred after 01-01-1996 and resulted in a commitment to TYC may be used under 12.42 (a), (b) and (c) (1) of the Texas Penal Code to enhance the punishment ranges of adult offenses



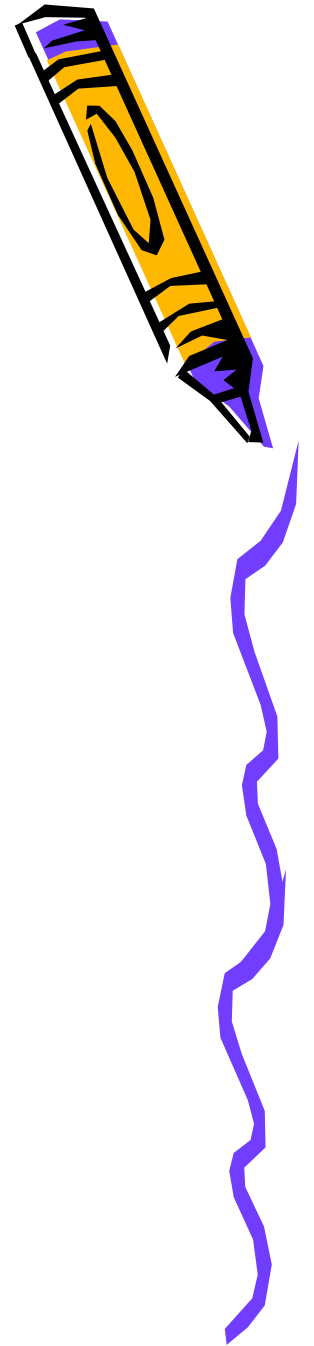
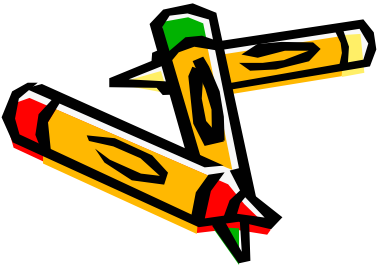
Using Juvenile Records

- In the Punishment Phase - 37.07 CCP
 - Enhancements
 - Includes both determinate and indeterminate sentences to TYC
 - May NOT be used to defeat probation eligibility
 - May NOT be used under 12.42 (c) (2) for automatic life sentence for repeat sex offenders
 - May NOT be used to trigger habitual provisions under 12.42 (d)



Additional Resources

- www.TDCAA.com
- www.TJPC.state.tx.us
- www.TYC.state.tx.us
- www.juvenilelaw.org



Thank you
&
Enjoy the rest of the
conference
and have a safe trip back
home!

