

**Ethics:
Confidentiality and
Interagency Sharing**

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**Why are juvenile "criminal"
records different than adult
records ?**

51.001 Texas Family Code

- To remove, where appropriate, the taint of criminality from children committing certain unlawful acts

What records are "juvenile" records

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

They are not:

Motor vehicle records
JP/Muni Court Records

What makes juvenile records confidential ?

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

58.007 Texas Family Code

- Applies to Law Enforcement files
 - May not be disclosed to public
 - Must be maintained locally

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

61.073 Human Resources Code

- Applies to written records of examinations and conclusions based on them and all orders concerning the disposition and treatment of juveniles in TYC
 - Not public record
 - To be kept under the control of the commission

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 the juvenile is deceased
 - OR 2001-3350
 - Not for CPS
 - OR 2001-4788
 - Not for school districts
 - OR 2001-0680

Texas Attorney General Opinions

- No access to juvenile offender cases under PIA/Open Records
 - Not if its your child
 - OR 2001-4279, 2001-4486
 - Not if you are the child
 - OR 2001-5316

58.003 TFC - Sealing

- Court SHALL seal record if:
 - Two years since final discharge
 - non felony offense or
 - non adjudicated, and
 - No adjudication/conviction
 - Felony
 - Misdemeanor of moral turpitude
 - No actions pending, or
 - Child was found not guilty

58.003 TFC - Sealing

- 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
 - No transfer to adult court
 - Records have not been used as punishment evidence in adult court
 - No conviction for a felony after becoming 17; or
 - Drug court under HSC Ch. 469

58.003 TFC - Sealing

- Affect of sealing
 - Answer to inquiry to the agency regarding records should be that no records exists

58.203 TFC - Certification

- DPS certifies to the probation department that the following conditions have been met and that records are subject to automatic restricted access:
 - Person is 21 or older
 - No Determinate or Waiver
 - Since the age of 17,
 - No deferred or conviction for a class B or better

58.203 TFC - Certification

- Court then orders that records are restricted if held by:
 - TYC
 - Juvenile Probation Department
 - Clerk of Court
 - Prosecutor's Office
 - Law Enforcement

58.204 TFC - Restricted Access

- Response to inquiries about "Certified" records should be to 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/statistical purposes

Expunction of JP/Muni Court Records

- 45.0216 CCP
 - Expunging convictions under 8.07(a)(4) & (a)(5) TPC (fine only offenses)
 - Includes dismissals of deferrals under 45.051 and 45.052

Expunction of JP/Muni Court Records

- 45.055 CCP
 - Failure to Attend School Offenses
- 161.255 Health and Safety Code
 - Tobacco Offenses
- 106.12 Alcoholic Beverage Code
 - Alcohol Offenses

55.01 CCP
applies to felonies and misdemeanors

Are there exceptions to confidentiality ?

58.007 Texas Family Code

- Law Enforcement files
 - May not be disclosed to public
 - Personal/parental exception
 - Must be maintained locally unless
 - Being collected for JJIS
 - Child is transferred from TYC to TDCJ
 - Sent to a Criminal Justice Agency under 411.082 Texas Gov. Code
 - Sent to a Juvenile Justice Agency under 58.101 TFC or Texas Gov. Code
 - Sent to TCIC/NCIC for missing child
 - 15.27 CCP school notices

JJIS

- 58.106 TFC
 - JJIS Confidentiality
 - Information collected in JJIS may not be disseminated except to:
 - FBI
 - Military with juvenile's permission
 - As provided by 411.083 Texas Government Code
 - To public for escapees/DTAs
 - For analytical purposes to TYC, TJPC and the Criminal Justice Policy Council

61.073 Human Resources Code

- TYC Disposition/Treatment records
- MAY be disclosed only as provided by:
 - 58.005 TFC
 - Just like any other provider
 - 61.0731 HRC
 - Personal/parental disclosure
 - Person with legitimate need
 - Law enforcement for offenses in facility
 - TDPRS if managing conservator
 - 61.093 HRC
 - Public release for escapees
 - 61.095 HRC
 - To prosecutors for punishment

58.003 TFC - Unsealing

- Records can be unsealed if:
 - (h)
 - Juvenile petitions and receives consent of Court
 - (k)
 - Prosecution petitions Court for purposes of punishment in adult cases
 - (m)
 - DPS makes "request" to Court for CHL applications

58.211 TFC – Rescinding Restriction

After restriction, if DPS learns that the subject is no longer eligible to have records restricted then it is required to notify the local juvenile probation department and probation notifies other agencies

Schools

- 58.0051 Family Code
 - 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)

Schools

- 15.27 CCP
 - School Notice Letters
 - Requires notice to schools of actions taken within juvenile justice system
 - Police agencies notify when taking child into custody/referral
 - DA's Offices notify on adjudicated or deferral
 - Probation Department notify on transfer of school during term of probation

Juvenile Board Guidelines

- 58.007(i) Texas Family Code

Allows the local Juvenile Board to develop guidelines under which juvenile information can be released without the permission of the Juvenile Court

Sex Offender Database

- 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
- Ten years after child leaves the system
- Not affected by sealing or destruction

Gang Offender Database

- 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

Gang Offender Database

- Chapter 61 CCP
Gang Records
 - Not for public release, only for other law enforcement and the Courts (61.03 & 61.04)
 - Is subject to review on request of child or parent if child is not in TYC or TDCJ (61.08)
 - Two year redeemed child removal (61.07)

DNA Database

- DNA Database
 - 54.0405 (a)(2)(B) TFC
 - Requires juveniles placed on probation for a registration offense to submit sample
 - 411.148 Government Code
 - Requires juveniles confined to TYC facility for a felony or placed on probation for a offense under 54.0409 TFC
 - 411.151 Government Code
 - Allows for expunction under 55.01 and 55.02 of the Code of Criminal Procedure

Consequences for breaking confidentiality !

Texas Public Information Act

- 552.002 Government Code
- What is public information
Information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body

Texas Public Information Act

- 552.003 Government Code
- Am I a governmental body
 - Board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of a state government and that is directed by one or more elected or appointed members
 - NOT to include the judiciary
 - Access to that information is governed by rules adopted by the Supreme Court

Texas Public Information Act

- 552.021 GC
 - Public information is available to the public at a minimum during the normal business hours of the governmental body
- 552.101 GC
 - Unless confidential by law or judicial decision

Texas Public Information Act

- 552.352 GC
 - A person commits an offense if:
 - the person distributes information considered to confidential under the terms of this chapter;
 - Permits inspection of the confidential information by an unauthorized person
 - Discloses confidential information to an unauthorized person
 - An offense under this section is subject to:
 - A fine up to \$1000
 - Confinement up to 6 months
 - Both
 - And constitutes official misconduct

Rules of Professional Conduct

- 1.05 (b)
 - A lawyer shall not:
 - Knowingly reveal confidential information;
 - Use confidential information to clients disadvantage, unless client consents or information has become generally known;
 - Use confidential information to lawyer or third person's advantage without consent.

Sex Offender Database

- 62.13 CCP
Deregistration/Unregistration

Failure to remove such information after notice will keep that agency, unless the agency is an institution of higher learning, from receiving further registration information.

Sex Offender Database

- 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

A few proper uses of Juvenile Records

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 State
 - Witness may open the door
 - 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
 - Enhancements
 - 51.13 specifies that felony offenses that occurred after 01/01/96 and resulted in any commitment to TYC may be used under 12.42 (a), (b) & (c) (1) TPC to enhance adult offenses

Using Juvenile Records

- Enhancements
 - 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
&
Have a safe trip back home !
