

JUVENILE RECORDS

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CONFIDENTIALITY

- **General Rule**
 - Records and files, including information from which a record could be generated, are confidential
 - May be shared only if specifically authorized by law



COURT, JPD, PROSECUTOR

- **“Open To Inspection Only By”**
 - Judge, PO, and professional staff/consultants of court
 - Juvenile justice agency with custody or control over juvenile offenders
 - Attorney for a party to the proceeding
 - Public or private agency supervising juvenile by arrangement of or order of juvenile court
 - Others with legitimate interest in proceeding – with leave of court



LAW ENFORCEMENT

- “May Be Inspected Or Copied Only By”

- Juvenile justice agency with custody or control over juvenile offenders
- Criminal justice agency (state/federal)
- Child and parent or guardian
 - Must redact names of victims, other suspects, witnesses, and any information excepted from disclosure under Public Information Act



OTHER (Agency/Provider)

- “May Be Disclosed Only To”

- Professional staff/consultants of agency
- Judge, PO, and professional staff/consultants of juvenile court
- Attorney for child
- Governmental agency if disclosure required by law
- Person/entity to whom child referred for treatment (with confidentiality agreement)
- TDC/JT/JJD – for stat. purposes and diagnosis or classification
- Other with legitimate interest in proceeding – with leave of court

SCENARIO 1

Little Johnny is 12 and is a Respondent in a juvenile proceeding. May he have a copy of the police report?

Yes, he may have a copy from law enforcement, not from JPD. The report must be redacted

SCENARIO 2

Adult prosecutor wants all records for purposes of punishment phase of adult trial. What can he see?

Record of adjudication – must ask court but court must give certified copy

Anything else – should get leave of juvenile court to access

EDUCATIONAL RECORDS

- School Must Share If Juvenile Service Provider Requests and:

- Juvenile taken into custody or referred to court for CINS or DC, and
- Info will be used to only to verify identity of student or to provide delinquency prevention or treatment services



MULTI-SYSTEM YOUTH

- JSP Must Share At Request Of Another JSP
- Following Purposes Only
 - Identifying multi-system youth
 - Coordinating and monitoring care
 - Improving quality of juvenile services provided

SCENARIO 3

The school has requested a list of all juveniles on probation. Can they have it?

It depends. The information must be for the purposes of: identifying multi-system youth, coordinating and monitoring care, and improving the quality of juvenile services provided

DESTRUCTION



- **No Referral**
 - Must destroy if no referral by 10th day after taken into custody
 - Exception: First Offender Program/Informal disposition

DESTRUCTION

- **No Probable Cause**
 - Must destroy
 - Intake or Prosecutor findings
- **Sealed Records**
 - Court may order destruction
 - CINS only, person must be 21, and no felony conviction

SPRING CLEANING

- Physical records only
- Permissive if criteria met
- Must have order from appropriate person(s)
 - JPD – Juvenile Board
 - Law Enforcement – Agency head
 - Prosecutor – prosecuting attorney



SPRING CLEANING

- Clerk of Court – must be electronically duplicated first
- Others can be destroyed earlier if electronically duplicated
- Juvenile cannot request this type of destruction

SCENARIO 4

Johnny was taken into custody on 2/1/12 and released to his parents. The referral to juvenile court was made on 2/22/12. What must happen?

The records must be destroyed.

JJIS

- DPS maintains; generally confidential
- If not restricted access, DPS may share with:
 - Military, with permission of juvenile offender
 - Person or entity listed in Gov't Code 411.083
 - Juvenile Justice Agency
 - TJJJ for analytical purposes; TJJJ Ombudsman
 - County, JP, Muni court exercising jurisdiction over a juvenile for truancy

SCENARIO 5



A military recruiter has asked JPD for unrestricted records of a former juvenile; the juvenile has given written authorization for release.

ANSWER

58.106 allows DPS, not JPD, to provide JJIS records to the military, with permission of the juvenile. However, under 58.007(i), JPD can release the records if juvenile board has adopted a guideline allowing it.

Note: The restricted access age change makes this almost obsolete.

SCENARIO 6

The Municipal Court has a truancy case over a juvenile with a record and has requested the record from JPD. What can JPD give?

The law allows DPS, not JPD, to provide JJIS records. JPD can allow inspection with leave of court or through juvenile board guidelines.

RESTRICTED ACCESS

- Age 17
- Not determinate sentence
- Not certified for adult prosecution

Restriction is automatic and not optional



RESTRICTED ACCESS

- Once restricted, records may not be disclosed to:
 - Law enforcement agency
 - Criminal or juvenile justice agency
 - Governmental or other agency given access to information under Gov't Code 411
 - Anyone else



RECORDS

- The information in JJIS
- Not underlying documents that created information in JJIS



RELEASE

- TJJJ, JPD, Clerk Of Court, Prosecutor's Office, Law Enforcement
 - May release records (info in JJIS) only to:
 - Criminal justice agency for criminal justice purpose
 - TJJJ or Criminal Justice Policy Council for research purpose



CRIMINAL JUSTICE AGENCY

- Federal or state agency
- Engaged in administration of criminal justice under statute or executive order
- Allocates substantial portion of annual budget to administration of criminal justice



CRIMINAL JUSTICE PURPOSE

- Activity included in administration of criminal justice
- Screening for employment with a criminal justice agency



INAPPLICABILITY

- RA does not apply to:
 - Sex offender registration records maintained by DPS or local law enforcement agency
 - Records relating to criminal combination or street gang maintained by DPS or local law enforcement agency



IMPACT ON JUVENILE

- Can legally deny involvement in juvenile case (except if testifying as defendant in criminal case)
- Cannot be penalized
- Cannot waive the restricted status
- Can have access to restricted records to prepare motion for sealing



SCENARIO 7

A military recruiter has asked JPD for records of a former juvenile; the juvenile has given written authorization for release. The records are restricted.

Must respond "No Records Exist."

SCENARIO 8

What if the recruiter knows there is a record?

Must respond "No records exist." May wish to refer him/her to 58.206 and 58.207

SCENARIO 9

We received a certification from DPS for restricted access on a pretty bad case. Can the judge refuse to restrict access?

No. Restriction is automatic and mandatory. On certification, the judge must issue the restriction order.



TJJD Legal Help Line

512-424-6721

JUVENILE RECORDS IN TEXAS

Juvenile records can be one of the most confusing aspects of the juvenile justice system in Texas. The rules regarding records vary depending on the individual circumstances. This paper is designed to be an overview of the laws related to juvenile records; it does not address procedures.

CONFIDENTIALITY

The general rule is that all records and files concerning a child, including information about a child from which a physical record or file could be generated, are confidential and may not be shared unless specifically authorized by law.

COURT, PROBATION DEPARTMENT, & PROSECUTING ATTORNEY RECORDS

The physical records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney that relate to a child who is a party to a proceeding under Title 3, Family Code are open to inspection only by:¹

- 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 for a party to the proceeding;²*
- 4. 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*
- 5. with leave of the juvenile court, anyone having a legitimate interest in the proceedings or work of the court.*

¹ Texas Family Code §58.007(b)

² Parents are parties to a proceeding under Title 3

LAW ENFORCEMENT RECORDS

*Law enforcement records and files concerning a child may be inspected or copied only by:*³

1. *the child and the child's parent or guardian;*
2. *a juvenile justice agency with custody or control over juvenile offenders;*
3. *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.*

*Before the child or the child's parent or guardian may inspect or copy the law enforcement record or file, the custodian of the record must redact:*⁴

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.*

*Law enforcement records concerning the child from which a record could be generated shall be:*⁵

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

OTHER RECORDS

*Records and files of a public or private agency supervising the child by arrangement of the juvenile court or having custody of the child under court order, including information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for referring a child for treatment is confidential and may be disclosed only to:*⁶

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;*

³ Texas Family Code §58.007(e)

⁴ Texas Family Code §58.007(j)

⁵ Texas Family Code §58.007(c)

⁶ Texas Family Code §58.005

6. TDCJ and TJJD for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
7. with leave of the juvenile court, anyone having a legitimate interest in the proceedings or work of the court.

EXCEPTIONS

The confidentiality provisions do not apply to the following:⁷

1. records maintained under laws regulating the 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, except that once the child has been convicted and satisfied the judgment for a fine-only misdemeanor (not a traffic offense), the records are confidential and may not be disclosed to the public.⁸

SHARING OF RECORDS

In 2011, in order to ensure more coordinated care for juveniles, the legislature passed laws that make it possible for otherwise confidential information to be shared with certain entities for certain reasons.

EDUCATIONAL RECORDS

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 that receives the information must certify in writing that it has agreed not to disclose the information to a third party, other than another JSP, and that it may use the information only to verify the identity of the student involved in the juvenile justice system 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 shared information is not subject to disclosure under the Public Information Act. The school that shares the records must keep a record of the shared information for at least seven years.⁹

⁷ Texas Family Code §58.007(a)

⁸ Texas Family Code §58.00711, but see Code of Criminal Procedure Article 45.0217(b) for exceptions.

⁹ Texas Family Code §58.0051

NON-EDUCATIONAL RECORDS

The non-educational records provision applies only to multi-system youth, which is defined as a person under 19 who has received services from two or more juvenile service providers.¹⁰ A JSP, upon receipt of a request for information from another JSP, must disclose the youth's personal health information or a history of governmental services provided to the youth, including the youth's identity, medical records, assessment results, special needs, program placements, and psychological diagnoses. The only limitation is that the information may be disclosed only for the purposes of identifying a multi-system youth, coordinating and monitoring care for the youth, and improving the quality of juvenile services provided to the youth. 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 shared information is not subject to disclosure under the Public Information Act.¹¹

SEALING OF RECORDS

If a juvenile record is sealed, the following things happen:

1. The adjudication is vacated and the proceeding is dismissed and treated as if it never occurred, except for the purposes of a subsequent capital prosecution;
2. All law enforcement, prosecuting attorney, clerk of court, juvenile court, and public or private agency or institution records ordered sealed must be sent to the court within 61 days;
3. All index references to the records must be deleted within 61 days and verification of the deletion sent to the court;
4. All the entities listed in #2 must reply "no record exists" in response to an inquiry in any matter;¹²
5. The juvenile is not required to state in any proceeding or application for employment, information, or licensing that he or she was ever a party to a proceeding in the juvenile system; such denial cannot be held against the person in a criminal or civil proceeding.¹³

FELONY ADJUDICATION GENERALLY

On application of the person, the court may order sealing only if:

1. the person is 19 years of age or older;¹⁴
2. the person was not certified as an adult;
3. the records have not been used as evidence in the punishment phase of an adult criminal proceeding; and
4. the person has not been convicted of a felony after becoming age 17.¹⁵

¹⁰ As a school is a JSP, every child in the juvenile justice system who has attended school is a multi-system youth.

¹¹ Texas Family Code §58.0052

¹² Texas Family Code §58.003(g)

¹³ Texas Family Code §58.003(j)

¹⁴ This is a 2011 legislative change; previously it was 21 years of age.

¹⁵ Texas Family Code §58.003(c)

NO ADJUDICATION OR CINS/MISDEMEANOR ADJUDICATION GENERALLY

MANDATORY

If the records relate to a CINS or misdemeanor adjudication or to a person taken into custody and never adjudicated, on application of the person, the court shall on its own motion order sealing if the court finds:

- 1. Two years have passed since the final discharge or last official action in the case (if no adjudication); and*
- 2. During that time, the person has not been convicted of a felony or misdemeanor involving moral turpitude, has not been adjudicated for delinquent conduct or CINS, and has no pending proceedings.¹⁶*

DISCRETIONARY

The court may order the sealing earlier than stated above as long as the order is after final discharge or the last official action in the case (if no adjudication), subject to any applicable hearing provisions in §58.003(e).¹⁷

SPECIAL SEALING PROVISIONS

DRUG COURT

The court may order sealing for a child adjudicated for CINS, felony, or misdemeanor offense once the child successfully completes a drug court program under Health and Safety Code Chapter 469. The sealing can be ordered with or without a hearing. The prosecutor may maintain a separate record of child's name, birth date, and date of program completion until child turns 17, at which time it must be added to the child's other sealed records.¹⁸ The court may order the sealing any time after final discharge or the last official action in the case (if no adjudication), subject to any applicable hearing provisions in §58.003(e).¹⁹

CINS PROSTITUTION

If a child is taken into custody or adjudicated for engaging in conduct constituting prostitution as defined by §51.03(b)(7), the court on its own motion and without a hearing shall order sealing of records related to that conduct.²⁰ The prosecutor may maintain a separate record of child's name, birth date, and date of program completion until child turns 17, at which time it must be added to the child's other sealed records. The court may order the sealing any time after final discharge or the last official action in the case (if no adjudication), subject to any applicable hearing provisions in §58.003(e).²¹

¹⁶ Texas Family Code §58.003(a)

¹⁷ Texas Family Code §58.003(d)

¹⁸ Texas Family Code §58.003(c-1) and (c-2)

¹⁹ Texas Family Code §58.003(d)

²⁰ Texas Family Code §58.003 (c-3) and (c-4) as added by HB 2015, 82nd Legislature

²¹ Texas Family Code §58.003(d)

CINS ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR (“SEXTING”)

The court may order sealing for a child taken into custody or adjudicated for CINS conduct described by Penal Code §43.261 if the child successfully completes an Educational Program under Education Code 37.218. The sealing can be ordered with or without a hearing. The prosecutor may maintain a separate record of child’s name, birth date, and date of program completion until child turns 17, at which time it must be added to the child’s other sealed records.²² The court may order the sealing any time after final discharge or the last official action in the case (if no adjudication), subject to any applicable hearing provisions in §58.003(e).²³

EXCEPTIONS

Records may not be sealed if:

1. the person was given a determinate sentence;²⁴ or
2. it is a record created or maintained pursuant to sex offender registration laws and the person still has an obligation to register.²⁵

REOPENING SEALED RECORDS

1. By court order, the subject of the records may be permitted to inspect sealed records.²⁶
2. Prosecuting attorney may petition to have records of a felony adjudication reopened for purposes of Penal Code §12.42(a)-(c) and (e), related to penalties for repeat and habitual felony offenders.²⁷
3. On the request of DPS, the court must reopen and allow DPS to inspect the files and records related to an applicant for a license to carry a concealed handgun.²⁸

JUVENILE JUSTICE INFORMATION SYSTEM

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 by criminal justice agencies and other agencies identified by statute. JJIS includes only information relating to delinquent conduct that would be a criminal offense (class B misdemeanor or higher) if committed by an adult.

The juvenile board, juvenile justice agencies, and clerk of the juvenile court are responsible for providing the necessary information to DPS.²⁹

²² Texas Family Code §58.003(c-3) and (c-4) as added by SB 407, 82nd Legislature

²³ Texas Family Code §58.003(d)

²⁴ Texas Family Code §58.003(b)

²⁵ Texas Family Code §58.003(n)

²⁶ Texas Family Code §58.003(h)

²⁷ Texas Family Code §58.003(k)

²⁸ Texas Family Code §58.003(m)

²⁹ Texas Family Code §§58.105 and 58.108

CONFIDENTIALITY

*The information in JJIS is confidential and for the use of DPS. DPS may share the information only:*³⁰

1. *to the military, with permission of the juvenile offender*³¹;
2. *to a person or entity listed in Government Code §411.083;*
3. *to a juvenile justice agency;*
4. *to TJJJ for analytical purposes;*
5. *to the TJJJ Office of Independent Ombudsman; and*
6. *to a county, justice, or municipal court exercising jurisdiction over a juvenile for truancy – failure to attend school.*³²

Information shared with any of those entities 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.

DESTRUCTION OF RECORDS

NO REFERRAL

*If a child is not referred to juvenile court on or before the 10th day after the child is taken into custody, the law enforcement agency taking the child into custody must destroy all information, including photographs and fingerprints, relating to the child. If the child is placed in a first offender program under §52.031 or on informal disposition under §52.03, destruction is not required until after the child completes the informal disposition or until the 90th day after the child successfully completes the first offender program.*³³

NO PROBABLE CAUSE

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

1. *At intake, a determination is made that no probable cause exists and the case is not forwarded to a prosecutor; or*
2. *The prosecutor determines no probable cause exists.*³⁴

³⁰ *This sharing is only permitted for records not sealed or under restricted access.*

³¹ *Because restricted access was changed from age 21 to 17, there will rarely be instances in which records may be given to the military, even with permission of the juvenile.*

³² *Texas Family Code §58.106*

³³ *Texas Family Code §58.001(c); Law enforcement may maintain information after the 90th day, but only to determine eligibility to participate in a first offender program.*

³⁴ *Texas Family Code §58.006*

SEALED RECORDS

On the motion of the child or on the court's own motion, the court may order the destruction of records that have been sealed if they do not relate to an adjudication of a felony or a class A or B misdemeanor, the person is at least 21, and the person has not been convicted of a felony as an adult.³⁵

SPRING CLEANING

Physical records and files, including entries in a computer file or information on microfilm, microfiche, or other electronic storage media, may be destroyed if certain 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. 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.³⁶

JUVENILE PROBATION DEPARTMENT RECORDS

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

- 1. CINS most serious alleged or adjudicated and person is at least 18;*
- 2. No action taken because referral did not relate to CINS or delinquent conduct and person is at least 18;*
- 3. Misdemeanor most serious conduct adjudicated and person is at least 21;*
- 4. Misdemeanor or felony alleged but no adjudication and person is at least 21;*
- 5. Felony adjudication and person is at least 31.*

Paper records may be destroyed earlier if duplicated electronically first. The electronic records may only be destroyed based on the criteria above.

LAW ENFORCEMENT AGENCY RECORDS

Physical records of a law enforcement agency may be destroyed under same rules as Juvenile Probation Department records, if destruction is ordered by the head of the agency.

PROSECUTING ATTORNEY'S OFFICE RECORDS

Physical records of a prosecuting attorney's office may be destroyed under same rules as Juvenile Probation Department records, if destruction is ordered by the prosecuting attorney.

OTHER RECORDS

Any other records, including Court Clerk records, may only be destroyed after they have been duplicated electronically (computer file, microfilm/microfiche, etc.). The electronic file may not be destroyed.

³⁵ Texas Family Code §58.003(l)

³⁶ Texas Family Code §58.0071

RESTRICTED ACCESS

Certain records are subject to having access to them automatically “restricted” by law. This means the records can be accessed by even fewer entities than could access them when simply “confidential.” Records with restricted access are not “sealed.” Therefore, they remain in place.

ELIGIBILITY AND PROCESS

1. DPS is responsible for certifying to the juvenile probation department that records are restricted.
2. Automatic restriction of access occurs when:
 - a. the child is 17 years old;³⁷
 - b. it was not a determinate sentence case; and
 - c. the case was not certified for adult prosecution.
3. When the juvenile probation department gets the notice from DPS that the records have been restricted, the juvenile court is required to order that the following records are restricted:
 - a. if child committed to TJJD, records maintained by TJJD;
 - b. records maintained by juvenile probation department;
 - c. records maintained by the clerk of the court;
 - d. records maintained by the prosecutor’s office; and
 - e. records maintained by a law enforcement agency.
4. The court must also order that the juvenile probation department make a reasonable effort to notify the child that the records have been restricted, provided that the child requested notification in writing and provided the probation department with a current address.³⁸

ACCESS

GENERALLY

Once records are restricted, the records or any information from them may not be disclosed to:

1. a law enforcement agency;
2. a criminal or juvenile justice agency;
3. a governmental or other agency given access to information under Government Code Chapter 411; or
4. anyone else.

The proper answer to a request for such records is, “No records exist.”³⁹

³⁷ This is a 2011 legislative change; previously it was 21 years of age.

³⁸ Texas Family Code §§58.203 and 58.207

³⁹ Texas Family Code §58.204(a)

EXCEPTIONS

DPS and entities receiving the court orders may give access to the information in JJIS to the following:⁴⁰

1. a criminal justice agency for a criminal justice purpose;
 - a. Criminal Justice Agency: a federal or state agency that is 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.⁴¹
 - b. Criminal Justice Purpose: an activity included in the administration of criminal justice or the screening of applicants for employment with a criminal justice agency.
 - c. Administration of Criminal Justice: detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. Includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.⁴²
2. for research purposes, to TJJD or the Criminal Justice Policy Council.

EXEMPTIONS

Restricted access does not apply to the following:⁴³

1. sex offender registration records maintained by DPS or a local law enforcement agency; and
2. records relating to a criminal combination or street gang maintained by DPS or a local law enforcement agency.

IMPACT ON THE PERSON WHO IS THE SUBJECT OF THE RECORDS

Once records are restricted, the person is not required to say he or she has been a respondent in a juvenile case in any:

1. proceeding;⁴⁴
2. application for employment;
3. application for licensing; or
4. application for other public or private benefit.

The person may not be punished, by perjury prosecution or otherwise, for denying:

1. the existence of the records or
2. the person's participation in a juvenile proceeding related to the records.

The person may not waive the restricted status of the records and may not authorize their release.⁴⁵

⁴⁰ Texas Family Code §58.204(b); If release allowed, only the information in JJIS may be released, not the underlying documents.

⁴¹ Government Code §411.082

⁴² Code of Criminal Procedure Article 60.01

⁴³ Texas Family Code §58.202

⁴⁴ Except in a criminal proceeding as the defendant, if otherwise required by law

⁴⁵ Texas Family Code §58.206

RESCINDING RESTRICTED ACCESS

Records lose their restricted status if the person is convicted of or placed on deferred adjudication for a Class B misdemeanor or higher after turning 17. DPS must notify the juvenile probation department that the records are no longer restricted. The juvenile probation department must then notify the entities that received the court order at the time of restriction.⁴⁶

FREQUENTLY ASKED QUESTIONS

The school has asked JPD for a list of all probationers. May we give it to them?

It depends on why the school wants the information. The school is a juvenile service provider and under newly created 58.0052, juvenile service providers must share information about multi-system youth with other juvenile service providers that request the information. However, that sharing is permitted only for the purposes of identifying multi-system youth, coordinating and monitoring their care, and improving the quality of juvenile services provided to them.

JPD has asked the school for confidential educational records for a juvenile referred to court. Are we entitled to them?

It depends. Newly created 58.0051 provides that if a juvenile has been taken into custody or referred to juvenile court for alleged delinquent conduct or CINS, the school must disclose the records to a juvenile service provider that has requested them. As the receiving entity, you must certify in writing that you have agreed not to disclose the information to a third party, other than another juvenile service provider, and to use the confidential information only to verify the student's identity and provide delinquency prevention or treatment services to the student.

A justice or municipal court is exercising jurisdiction over truancy – failure to attend school case. Can JPD give that court any records?

Under newly created 58.106(a)(6), the court is entitled to get from DPS the records in JJIS. There is no correlating authority for release by the juvenile probation department. For JPD to release the records, an order from the juvenile court is necessary under 58.007(b)(5) or the juvenile board can create standing authorization for release under 58.007(i).⁴⁷

⁴⁶ Texas Family Code §58.211

⁴⁷ See Attachment 1 for an example

Restricted Access Specific Questions

Does the judge have discretion in issuing a restricted access order under 58.207?

Restricted access is automatic. Once DPS has certified that the child's records are restricted, the juvenile court must issue the order. There are no exceptions.

May the records on restricted access be released if there is a subpoena?

A subpoena does not impact the restricted status of the records. Records may only be released to a criminal justice agency for a criminal justice purpose, regardless of if there is a subpoena. If you receive a subpoena, you should consider taking it to your district or county attorney, as appropriate, for direction on the next steps, which may include them filing a motion to quash the subpoena.

Is the juvenile court authorized by law to issue an order for release of records on restricted access as provided by 58.005 or 58.007(b)(5)?

Once records are on restricted access, they may only be released to a criminal justice agency for a criminal justice purpose; the records cannot be released for other purposes, even through a court order.

May records on restricted access be given to the local police for a criminal justice purpose?

Records may only be released to a criminal justice agency, which is defined as a "STATE or FEDERAL" agency. Even if a law enforcement agency is requesting the records for a criminal justice purpose, only a state or federal agency is entitled to them.

May JPD give records that are on restricted access to the military?

Texas law does not permit the release of the records to the military. You must respond, "No records exist for that person." Sometimes a written answer is what the military needs.

What if the requestor has written authorization from the juvenile saying the records may be released?

The records may not be released except to a criminal justice agency for a criminal justice purpose. The child does not have the authority to waive the restricted status of the records.

What if the requestor knows the records exist – either because the juvenile told him or because the requestor performed a background check using the FBI records?

The records may not be released except to a criminal justice agency for a criminal justice purpose. We understand that the FBI may not restrict or remove records in response to a notice from DPS, so this causes some confusion when requestors have access to the FBI database. Therefore, in addition to your response that "no records exist," you may wish to provide a written explanation to the requestor regarding the law in Texas.⁴⁸

⁴⁸ See Attachment 2 for an example.

If the records may be released, may the requestor have copies of court records, police reports, etc.?

If the requestor is a criminal justice agency requesting the records for a criminal justice purpose, only the information in JJIS may be provided; the requestor is not entitled to copies of the documents that formed the basis of that information.

What if the juvenile is the one requesting the records?

The juvenile is allowed to have access to records that are on restricted access for the purpose of preparing a motion for sealing.⁴⁹

⁴⁹ Texas Family Code §58.210(c)

JUVENILE BOARD RESOLUTION

STATE OF TEXAS

Know All Men By These Present

COUNTY OF _____

On this the _____ day of _____, 20____, a duly called and lawfully convened meeting of the Juvenile Board of _____ County, Texas was held in the City of _____, pursuant to the Texas Open Meetings Act. A quorum of the Members were present, to wit:

[Insert Names of Juvenile Board Members Present)

where, among other matters, came up for consideration and adoption the following Resolution:

Whereas, the _____ County Juvenile Probation Department collects and maintains records and files relating to a child a party to a proceeding under Title III of the Texas Family Code; and

Whereas, the records and files collected and maintained by the _____ County Juvenile Probation Department are generally confidential and may only be disclosed to certain entities pursuant to Family Code Section 58.005; and

Whereas, the military of this state or the United States is not authorized to access the _____ County Juvenile Department records and files under Family Code Sections 58.005 or 58.007; and

Whereas, the Juvenile Board of _____ County believes the military of this state or the United States has a legitimate interest in the proceeding or in the work of the juvenile court of _____ County, Texas;

Therefore Be It Resolved that the Juvenile Board of _____
County, Texas does hereby formally authorize, pursuant to Family Code Section 58.007(i), the
_____ County Juvenile Probation Department to release
records and files to military personnel of this state or the United States with written permission
from the child or the child's parent if the child is under 18 years of age. Release of records and
information under this resolution shall be limited to a summary juvenile offense history only.

The foregoing Resolution was lawfully moved by _____,
duly seconded by _____, and duly adopted by the
Juvenile Board on a vote of _____ members for the motion and _____ opposed.

Printed Name of Juvenile Board Chair

Signature of Juvenile Board Chair

Date Signed

Dear _____,

Thank you for your inquiry about juvenile records regarding _____. We have searched our records and determined that no records exist for this person.

Because we understand that at times the answer that no records exist may cause confusion, we are providing the following information about Texas law with regard to juvenile records. This information is provided only for assistance in understanding juvenile records in Texas; it is in no way intended to be legal advice

As provided by Texas Family Code §58.203, certain records are placed on “restricted access” automatically when a person turns 17 years of age.¹ Records that are on “restricted” access may be disclosed only to a state or federal criminal justice agency for a criminal justice purpose, as defined in Texas Government Code §411.082.

What this means is that the Texas Department of Public Safety, juvenile probation departments, law enforcement agencies, prosecutors, juvenile courts, and other entities that possess juvenile records must answer that “no records exist” when asked for records that have been placed on “restricted access.” This is true even if the requestor would have been entitled to the records if they were not on restricted access. See Texas Family Code §§58.204 and 58.207(b)

In addition to the legal requirement for those who possess the juvenile records to deny their existence, Texas Family Code §58.206 creates some protections for the person who is the subject of the records. He or she may legally deny all events (arrest, detention, prosecution, etc.), as well as the existence of the records. Texas law states that this right applies for all situations, including applications for employment, licensing, and educational opportunities, and the law states that the person may not be punished for such denial. The only exception to the right to deny is when the person is testifying as a defendant in a criminal trial.

The person is also prohibited from waiving the restricted access protections, which means that even if the person admits there are records and asks that they be released, they cannot be. The person or his attorney may, however, have access to restricted records for the subject of the records to enable the preparation of a motion for sealing under section §58.210(c).

The above information is provided to all persons requesting records that do not exist, whether they do not exist because the person was never involved in the juvenile justice system or do not exist because they are subject to “restricted access.” The provision of this information is not an acknowledgment that the person was ever subject to the juvenile justice system.

We hope this information is helpful. Please feel free to contact us with additional questions.

¹ This is a recent legislative change. Prior to June 2011, access was not restricted until the person was 21 years of age.

ATTACHMENT 2