

**The following outline describes juvenile records and proceedings in Texas and was graciously provided by Kimberly McCary, Attorney at Law in Lewisville. It has been updated to reflect legislative changes from the 81st Legislative Session in 2009. Thank you, Kimberly!**

***Automatic Restriction of Access to Records – Ch. 58, Subch. C, Family Code***

**I. Exempt records - §58.202, Family Code**

- A. Sex offender registration
- B. Criminal combinations and street gangs

**II. Certification – §58.203, Family Code**

- A. Requirements
  - 1. Person is at least 21
  - 2. Juvenile case did not include violence of habitual felony conduct resulting in proceedings in the juvenile court
  - 3. Juvenile case not certified for trial in criminal court
  - 4. DPS has not received a report in its criminal history system that the person was granted deferred or convicted of a felony or jailable misdemeanor after turning 17
- B. Done by DPS
- C. Determinate Sentence cases
  - Merely because one referred does not exclude it
  - Nor is it excluded if the case is handled as regular delinquency
  - Only if state got Grand Jury approval is it excluded from restricted access

**III. Restricted Access on Certification – §58.204, Family Code**

Limited to criminal or juvenile justice agencies for the purpose of crime investigation, prosecution, adjudication or sanctioning, and for purposes of screening applicants for employment.

**IV. FBI – §58.205, Family Code**

DPS requests that they restrict and if cannot, delete. But up to FBI.

**V. What protected person can say – §58.206, Family Code**

Right to deny existence of records in all situations except when the subject of the records is testifying as a defendant in a criminal trial. Person cannot waive restricted access of records or consequences of restricted access.

**VI.** But person with restricted access fully accountable for criminal conduct, like enhancement of criminal sentence by proof of juvenile felony adjudication with TYC commitment, juvenile adjudications in criminal penalty phase.

**VII. Duty of JPD or TYC – §58.209, Family Code**

Tell juvenile and parent, guardian, etc., about sealing and restricted access because one of purposes is to influence juvenile's behavior.

*Texas Juvenile Law, 7th ed., by Robert Dawson*  
**Chapter 15: Access to and Confidentiality of Juvenile Records and Proceedings**

**I. Use of Juvenile Record in Other Proceedings**

Juvenile Justice Code proceedings in which child is a party  
Sentencing proceedings  
Civil commitment proceedings

**II. Use to Impeach Testimony of a Witness**

Usually can show proof of felony or crime of moral turpitude (overcome balancing test)

But Rule 609(d) R Evid cannot use juvenile adjudications (unless R testifies)

But witness can open door to this evidence by placing her character in evidence

Use to cross-examine character witness with “have you heard” question

Use as a basis for reputation testimony, peaceable and law abiding

*Davis v Alaska* – possible biases, prejudices or ulterior motives

**III. Use at Penalty Phase of Criminal Trial**

A. Adjudicated offenses – felony and jailable misdemeanors  
(mod is not an adjudication)

B. Unadjudicated offenses

“Evidence may be presented as to any matter that the court deems relevant to sentencing”

Extraneous offenses that can be proven BRD

**IV. Use of juvenile proceedings as a deposition – Rule 804(b)(1), R Evid**

**V. Use as a Prior Felony Conviction**

Felony resulting in TYC – repeat offender application

Juvenile adjudications cannot be used for either or both of the prior felony convictions needed to invoke the habitual offender provision (25 yr min sentence)

Juvenile felony does not count to eliminate probation eligibility

**VI. Confidentiality of Proceedings – §54.08, Family Code**

Open unless good cause. For child under 14, presumption is to close unless interest of child or public better served by open proceedings.

Determinate Sentence cases open unless person requests and with consent of attorney and court – §54.11(f), Family Code

**V. Records not Part of JJIS – §58.007, Family Code**

Juvenile motor vehicle records

Muni and JP court records

Juvenile court, prosecutor and probation records

Agency records

Law enforcement records

**VI. Fingerprinting or Photographing Children in Custody – §58.002, Family Code**

With consent of juvenile court (and probable cause)

Missing children clearinghouse

Child taken into custody for felony or jailable misdemeanor

Child referred to the juvenile court but not in custody (paper referral) – §58.001(c), Family Code

**VII. JJIS – Ch. 58, Subch. B, Family Code**

Purpose:

Rap sheet to make informed decisions

Solve crimes

Facilitate research

Maintained by DPS

All info forwarded to FBI

No CINS in JJIS

Child must be referred to juvenile court not just taken into custody (if not referred within 10 days, all info must be destroyed, unless First Offender Program or Informal Disposition)

Access:

With permission of juvenile, military

Person who gets to have access to adult records

JJ agency

Various agencies for analytical purposes

### **VIII. Gang Records – Ch. 61, Code of Criminal Procedure**

Info about street gangs maintained by law enforcement as intelligence info

Operated by DPS

Includes juveniles and adults

Reasonable suspicion to believe gang member has engaged in crime

Can be accessed by criminal justice agency, court or subject person

Adult or parents of child may review

Remove if child and 2 years without arrest

2-year period does not include time youth committed to TYC or in TDCJ

### **IX. DNA Records**

TYC can do either by court order or if no court order but one of enumerated required offenses

**New §54.0409, Family Code** – DNA sample now required if juvenile placed on probation for 3g felony or felony involving use/exhibition of deadly weapon

**New §54.0409, Family Code** – Payment of fees for offenses requiring DNA testing

### **X. Destruction of Records – §58.006, Family Code**

No referral

No PC

No referral by law enforcement within 10 days – §58.001(c), Family Code

Certain Sealed Records – authorized but not required – §58.003(l), Family Code

Person or court can make motion  
Eligible if  
CINS (non-felony and non-jailable misdemeanor)  
Person now 21  
No felony conviction

**XI. Communication of info to schools – Art. 15.27, Code of Criminal Procedure**

§58.0051, Family Code – Interagency Sharing of Records – pre-adjudication

**XII. Sealing or Records – §58.003, Family Code**

- A. Sex Offender Registration – not exempt from sealing, only postponed from sealing until there is no longer an obligation to register
- B. Determinate Sentence cases – no sealing, not only of DS case but any other cases the juvenile had
- C. Five Types
  - 1. Sealing never permitted in DS, as stated above
  - 2. Discretionary with juvenile court if:
    - 21 or older
    - No transfer to criminal court
    - Records not used in punishment phase
    - No conviction of felony after age 17
  - 3. Non-felonies and non-adjudications after 2 year delay
    - Who may apply:
      - Person, court, DPS
    - Requirements:
      - 2 years since last official action or discharge
      - No juvenile adjudication or criminal conviction of felony or misdemeanor involving moral turpitude
      - No pending cases seeking adjuc or criminal conviction
  - 4. Non-felonies and non-adjudications any time after exit – totally discretionary with court; no 2 year wait, but must have no adjudications or convictions since exited system
  - 5. Immediate order of sealing if not guilty finding is made

6. **New §58.003(c-1), Family Code** – Discretionary sealing of felony or misdemeanor records upon successful completion of drug court program; can be with or without a hearing
7. **New §58.003(c-2), Family Code** – If records ordered sealed, prosecutor or JPD may maintain separate record until 17th birthday
8. **Amended §58.003(e), Family Code** – Applicant may waive right to a hearing in writing with consent of court and prosecutor

**XIII. Statewide Juvenile Information and Case Management System – Ch. 58, Subch. E, Family Code**

Purpose:

Provide accurate statewide info on children in JJ system  
Facilitate communication/info between criminal and juvenile justice agencies and partner agencies about services for juveniles  
Provide comprehensive JJ info in a common data collection system

**Amended §58.403, Family Code** – TJPC to use interlocal contracts with counties to create, operate, maintain JCMS system  
Appropriated funds to be used for paying costs under interlocal contracts  
TJPC to provide training to counties on use/operation of JCMS