

Chapter 15

ACCESS TO AND CONFIDENTIALITY OF JUVENILE RECORDS AND PROCEEDINGS

I. Comparing Adult Criminal Records and Juvenile Records:

(A) Court clerk records in a Criminal Court are public records, while those of the clerk in the Juvenile Court are NOT public records.

(B) Juvenile information is reported to and kept on the centralized computer database, the Juvenile Justice Information System (JJIS) maintained by the DPS, but unlike criminal information, is not available to the public or on the internet, and can only be accessed by law enforcement and (NEW provision) certain non criminal state agencies and other organizations as authorized by statute.

(C) SEX OFFENDER records regarding a juvenile offender who is required to register, including photos, are public records in the DPS database and can be accessed online. (Legislation passed in 2001 allows the juvenile court judge the discretion to excuse sex offender registration in certain cases. There are also Unregistration and Aderegistration provisions that are retroactive. **New legislation**, effective 9-1-03 provides that if treatment is satisfactorily completed then registration is excused unless the state moves for a hearing on the matter. This provision is also retroactive. (This is covered fully in another presentation.)

(D) Expungement/Sealing/Restricted Access : Adult records can be expunged only under limited circumstances, while most Juvenile records can be sealed with a relatively easy procedure when the juvenile qualifies. Additionally, there is now a new provision which provides automatic restriction of access, even if the records have not been sealed.

(E) Records of Juveniles Outside of Juvenile Court: Not all court records of juvenile age persons are Juvenile Records only those pertaining to proceedings in a Juvenile Court under the provisions of the Juvenile Justice Code in the Family Code. Proceedings for certain types of offenses (i.e.: traffic offenses, fineable misdemeanors, alcoholic beverage code offenses, curfew and other local ordinance offenses, and truancy) involving juvenile age defendants in both Municipal Court and in JP courts are handled under the special laws that pertain to those offenses. Those records are not protected as Juvenile Records although some of them have provisions that allow sealing or expungement. In Municipal and JP courts, clerk records ARE open to the public and an affirmative finding results in a Criminal conviction despite the fact that the defendant is of juvenile age.

II. Use of Juvenile Records in Other Court Proceedings

(A) Regarding the use of Juvenile Records in courts proceedings, Sec. 51.13 of the Family Code says:

(a) ...an order of adjudication ...is not a *conviction* of crime...and does not impose any civil disability...(thus, use is limited if conviction is required);

(b) The adjudication or disposition ...in a hearing under this title may be used only in subsequent:

(1) proceedings under this title in which the child is a party;

- (2) sentencing proceedings in Criminal Court against the child to the extent permitted by the Texas Code of Criminal Procedure (see Art. 37.07 Sec. 3 (a) TCCP: or
- (3) civil commitment proceedings (as an adult sexual predator) under Ch. 841 Health and Safety Code.

(B) Different situations where Juvenile Records are used in other court proceedings:

(1). Used to Impeach the testimony of a Witness:

(a) Under Rule 609(a) TRE: Impeachment by evidence of conviction of a crime: impeachment is permitted to show that a witness was previously convicted of a felony or a misdemeanor involving moral turpitude because this is thought to have a bearing on the credibility of the witness.

Since an Adjudication of delinquency is not a conviction of a crime, it is not admissible to impeach the testimony of a witness in court proceedings.

(2) Rule 609(d) TRE: SPECIAL RULE FOR JUVENILE HEARINGS: Evidence of juvenile adjudications is not admissible, except for proceedings conducted pursuant to Title III, Family Code, in which the witness is a *party*, under this rule...@

Thus, a juvenile adjudication is admissible in a juvenile court hearing under the Juvenile Justice Code in which the witness is the Juvenile Respondent.

(C) Use to Cross-examine Character Witness:

(1) When a witness testifies about the defendant's good character or reputation, then the state can ask *Have you heard*@questions regarding the defendant's record and history.

(2) The CCA has ruled that questions about the defendant's juvenile history and record are permitted. (In Love v. State, 533 SW 2d 6 (Tex Crim App 1976) the court permitted questions about whether the defendant was *Arrested*@for an offense - *not adjudicated, or convicted* - because the inquiry was whether the witness had heard about the incident, not whether it in fact occurred).

(D) Use as Basis for Reputation Testimony:

(1) CCP 37.07 permits testimony at the penalty phase of a criminal trial about the defendant's *General reputation*@for being peaceful and law abiding.

(2) Courts have permitted such testimony even when the basis for the testimony was behavior that took place when the defendant was juvenile age.

(E) Use in the Penalty Phase of a Criminal Trial:

(1) Adjudicated Offenses: [JJC 51.13(b)(2) and CCP 37.07, Sec. 3(a)]: Evidence may be offered of an Adjudication based on a *FELONY* or a *MISDEMEANOR* punishable by confinement in jail.

(2) Only the Juvenile Court Judgement of Adjudication or Adjudication and Disposition are admissible. (Defense counsel must see that only the above admitted and that other documents are removed or culled from the packet of material).

(3) Misdemeanors are admissible ONLY if the offense occurred on or after January 1, 1996. (The effective date of the JJC).

(4) Notice of Intent to Introduce Adjudication: CCP 37.07, Sec 3(g) provides Upon timely request by the defendant, notice of intent to introduce evidence...shall be given...as in Rule 404(b) TRCE. Case law has held that 2 weeks is sufficient.

(5) Proving Identity:

(a) ID-~~d~~ by fingerprint on Judgement. JJC 54.04(j) requires that juvenile's thumbprint be affixed to all juvenile orders of adjudication for a felony or jailable misdemeanor, and allows the court to require that a photo of the child be attached to the order.

(b) Judicial admission - defendant admits juvenile adjudication in the course of testimony.

(c) ID-~~d~~ by testimony from a juvenile probation officer or other court officer who was present that the defendant is the same person who was adjudicated in the juvenile court.

(6) Unadjudicated Offenses:

(a) CCP 37.07, Sec 3(a) permits evidence at the penalty phase of *Any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt to have been committed by the defendant or for which he could be held criminally responsible... @*

(b) Presentence Investigation Report - could cover defendant's juvenile history which could include records of arrests, referrals, adjudications, and dispositions and criminal and social history. CCP 42.12, Sec 9(a). Judge could question defendant prior to sentencing about his juvenile record and can consider unadjudicated offenses. No PSI if defendant elects jury punishment.

(F) Use to Confront and Cross Examine State's Witnesses:

(1) Prohibition in JJC 51.13 on the use of evidence of juvenile proceedings has an exception in the situation where a criminal defendant has a constitutional right to confront and cross examine the witness for the purpose of showing bias, prejudice, or ulterior motives to testify in the State's favor. See Davis v. Alaska, 415 U.S. 308, 94 S.Ct.1105 (1974).

(2) Counsel can obtain pretrial discovery to learn about the juvenile involvement of a State's witness on the same basis as he can obtain information about a criminal record. CCP 39.14 requires a showing of good cause, materiality, and possession by the State of the record.

(G) Use of Juvenile Proceedings as a Deposition:

(1) TRE 804(b)(1) permits former testimony to be offered if the witness is unavailable in person and if the party against whom the testimony is now offered had an opportunity and similar motive to develop the testimony by direct, cross examination or redirect examination.

(2) The party does not actually have to availed himself of the opportunity to develop the testimony, only have had the chance to do so.

(H) Use as a Prior Felony Conviction (i Use as an Enhancement):

(1) An adjudication under JJC 54.03 [Adjudications] of delinquent conduct for felony offense that results in a commitment to the TYC under JJC 54.04(d)(2), (d)(3), or (m) [Dispositions] or 54.05(f) [Motion to Modify] is A FINAL FELONY CONVICTION for the purposes of PC Sec 12.42(a)-(c)(1) and (e) [Enhancements]. See PC Sec 12.42(f). In other words: TO BE USED AS AN ENHANCEMENT FOR AN ADULT CHARGE , A JUVENILE ADJUDICATION MUST BE FOR A FELONY AND RESULT IN A COMMITMENT TO TYC AND IT MUST BE AN OFFENSE THAT OCCURRED ON OR AFTER 9-1-96. New law prohibits use of prior adjudications under mandatory life sentencing provisions for repeat sex offenders under Sec. 12.42 (c)(2).

(2) Juvenile Adjudication cannot be used to enhance unless it is a *FELONY and results in commitment to TYC*. Juvenile probation, even if child is placed outside the home, cannot be used.

(3) TYC commitment can be either for a determinate sentence or an indeterminate (regular) commitment.

(4) Juvenile adjudications CANNOT be used to invoke the A*Habitual*@offender provision in PC 12.42(d).

(5) Use of the word A*ONLY*@in FC 51.13 means that a juvenile felony adjudication does not constitute a prior felony conviction for any purposes other than for the repeat offender statute [PC 12.42]. A prior juvenile felony adjudication would not be a prior felony A*conviction*@that would make a defendant ineligible to receive probation from a jury.

(6) To qualify, the juvenile felony adjudication must be based on conduct occurring on or after January 1, 1996. (In 1997 the legislature enacted this provision to ensure that all juveniles subject to it had been properly warned by the Juvenile court.)

III. Confidentiality of Juvenile Court Proceedings

(A) Judicial Discretion: FC Sec 54.08 gives the juvenile court judge authority to decide whether the proceedings should be opened or closed.

(1) TO THE PUBLIC: 54.08(a) provides A..the court shall open hearings under this title to the public unless the court, for good cause shown, determines that the public should be excluded.@ If the court permits members of the press and the public to attend, it cannot thereafter prohibit them from further dissemination of the information disclosed in the public hearing.

(2) TO THE VICTIM AND FAMILY: 54.08(b) provides AThe court may not prohibit a person who is a victim..., or the person's family, from personally attending...unless the victim or member of the victim's family is to testify in the hearing....and the court determines that the ...testimony would be materially affected...@

(3) IF THE CHILD IS UNDER 14: 54.08(c) requires Af a child is under the age of 14...the court shall close the hearing to the public unless the court finds that the interests of the child or the interests of the public would be better served by opening the hearing to the public.@

(4) Under the above provisions the court can exclude the public in a hearing in even a Determinate Sentence case.

(5) EXCEPTION: In a Transfer/Release hearing under 54.11 regarding a determinate sentence case, subsection (f) provides that a Ahearing under this section is open to the public unless the person to be transferred or released waives a public hearing with the consent of his attorney and the court.@

(6) Definition of a Afamily member@for the purposes of 54.08(b) has the meaning as defined in Sec 71.003 of the Family Code. (Consanguinity, affinity, former spouses, biological parents, foster child/parent)

(7) AVictim@is not specifically defined in this section. Looking to the definition in Ch 57 [ARights of Victims@ it is defined as Aa person who as a result of the delinquent conduct or CINS conduct of a child, suffers a pecuniary loss or personal injury or harm.@

IV. Records that Are Not Part of the Juvenile Justice Information System

Records kept in juvenile cases have changed a lot in recent years and there are special provisions regarding the maintenance of records of juveniles referred to the juvenile court. Juveniles referred to court now have state-wide computerized records in the Juvenile Justice Information system maintained by the DPS. However there are records pertaining to juvenile age defendants that are outside of the Juvenile Justice system. Not to say that these records are not maintained and kept, they are, but these files and records have their own special provisions and include the following:

(1) Motor Vehicle Records: Sec. 58.007(a) of the JJC says Athis section does not apply to a record or file relating to a child that is ... required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state.@ Motor vehicle records pertaining to juvenile age persons are handled in the same fashion as adult motor vehicle records. This includes driver's license records, traffic law enforcement records and reporting of motor vehicle accidents. All are public record and not subject to confidentiality provisions pertaining to juveniles.

(2) Municipal and Justice Court Records: Sec 58.007(b) excludes records maintained by municipal or justice court from the protection of juvenile confidentiality. Records in those courts are criminal records even when the subject is a juvenile age defendant. This includes Alcoholic Beverage Code offenses, local ordinances such as curfew/truancy cases, tobacco possession, and all other fineable misdemeanors handled by these courts. None of the records of these cases are protected by the provisions in the Family Code.

(3) Juvenile Court, Prosecutor, and Juvenile Probation Records: The information in these records CAN end up in the Juvenile Justice Information System. ALL these records are protected by confidentiality provisions in Sec 58.007(b) in the JJC. These records are open to inspection only by:

1. The judge, probation officers, and professional staff of the court
2. A juvenile justice agency
3. An attorney for a party
4. A public or private agency providing supervision through the court
5. With permission of the court, anyone having a legitimate interest

(4) Access by Prosecutor: Sec 58.007(g) a prosecutor may obtain a record for use in an adult criminal case under Art 37.07 Sec 3(a) CCP, by submitting a request to the juvenile court. Upon receipt of such request the court shall certify and provide the copy of the record. This includes all delinquency cases involving felony and jailable misdemeanor adjudications and includes probations as well as TYC commitments. The prosecutor may also obtain a copy of the adjudication from TYC [Human Resources Code Sec 61.095].

(5) Agency Records: Sec 58.005(a) provides for the confidentiality of the records of the various agencies that may deal with the child. Information relating to diagnosis, treatment, evaluation, etc., may be disclosed only to:

1. Professional staff or consultants
2. The judge, probation officers, and professional staff of juvenile court
3. Attorney for the child
4. A governmental agency where disclosure is required by law
5. Person to whom child referred for treatment
6. TDCJ and TJPC for statistical purposes
7. With permission of juvenile court, any person having legitimate interest

(6) Law Enforcement Records: Sec 58.007(c)-(f) provides confidentiality of local law enforcement records. This covers written and electronic records. These records may not be disclosed to the public and shall be:

1. Kept separate from adult records
2. Accessible under controls separate from adult records
3. Maintained on a local basis only
4. Exception: those records pertaining to persons transferred to TDCJ
5. Exception: Records of children reported missing

(7) Juvenile court can release information regarding a child who is the subject of a warrant or a directive to apprehend.

(8) DPS can release information regarding an escapee who is wanted.

V. Fingerprints and Photographs: Sec 58.002 JJC : A child may not be fingerprinted or photographed

(1) Without the consent of the juvenile court unless the child is taken into custody or referred for a felony or a jailable misdemeanor.

(2) Unless child is not in custody and has voluntary written consent of child's parent/guardian.

(3) Section does not apply to fingerprints and photos required for driver's license or identification card.

(4) Fingerprinting and Photographing allowed:

1. With consent of juvenile court
2. For inclusion in missing children clearinghouse
3. When taken into custody for felony or jailable misdemeanor
4. When referred to juvenile court, but not in custody

(5) There must be probable cause to believe child has engaged in delinquent or CINS conduct to justify fingerprinting.

(6) EXCEPTION: for Gang Database under CCP Art 61.

(7) Fingerprint and photo records maintained and protected the same as other law enforcement records.

(8) SECTIONS: 58.0021 and 58.0022: TEMPORARY CUSTODY:

1. 58.0021 allows TEMPORARY CUSTODY to take prints if:
 - A. Officer has probable cause to believe child engaged in delinquent conduct;
 - B. Other fingerprints found during investigation, and
 - C. Probable cause to believe child's fingerprints will match.

2. 58.0021 allows TEMPORARY CUSTODY to take photo if:
 - A. Officer has probable cause to believe child engaged in delinquent conduct; and
 - B. Officer has probable cause to believe child's photo will be of material assistance in the investigation of the conduct.
 - C. TEMPORARY CUSTODY FOR THE ABOVE IS NOT TAKING INTO CUSTODY UNDER SECTION 52.01.
 - D. Is not reportable to JJIS
 - E. If the child is not taken into custody under 52.01, he SHALL be released as soon as fingerprints and photos are obtained.
 - F. The fingerprints and photos shall be immediately destroyed if there is no positive ID or comparison.
 - G. Officer must make reasonable effort to notify parents of action
 - H. Fingerprints and photos under this section may be taken at a juvenile processing office or a location that affords reasonable privacy to child.

3. 58.0022 allows an officer who takes a child into custody for a CHINS offense to fingerprint and photograph a child, if, after reasonable effort, he is unable to identify the child. The prints and photos must be destroyed after ID or upon determination that child cannot be identified.

VI.

(2) Two main types of information kept:

1. Information about the juvenile and the offense
2. Fingerprints

(3) All juveniles have an identifying ID number that will remain for life

(4) All information is forwarded to FBI and becomes part of their database

(5) Includes offenses that would be felonies or jailable misdemeanors

(6) Must be referral to juvenile court within 10 days of arrest

(7) Excludes children in first offender or informal disposition programs

(8) JJIS is not public information. It is confidential and may not be disseminated EXCEPT:

- a. to military, with juvenile's permission
- b. to a criminal justice or law enforcement agency
- c. persons in the system for research and statistical projects
- d. agencies providing services who are permitted access

VII. Gang Records: Compilations of information about street gangs maintained by law enforcement as intelligence information allowed under the provisions of CCP, Chapter 61.

(1) Information may be on paper, in a computer or any other manner

(2) Information must be relevant to identification of organization involved in criminal activity ; and

(3) Consist of any two of the following criteria:

1. Self admission
2. Identification by reliable informant
3. Corroborated identification
4. Evidence individual frequents documented area of a known gang;
5. Associations with known gang members;
6. Uses known gang dress, hand signals, tattoos or symbols.
7. Evidence individual taken into custody with known gang members for offenses consistent with criminal street gang activity.

(4) Local government can require parental notification regarding gang activity

(5) Information in Gang Database not public information, but can be released to another criminal justice agency, a court, or a defendant making proper request under CCP Ch 39

(6) An individual or parents can request a review as to accuracy on information in

database.

(7) A person at TYC or TDCJ cannot request a review.

(8) A juvenile's database information must be removed in 2 years if no arrest.

VIII. Sex Offender Registration Records: The law is now in Chapter 62 of the CCP and applies to juveniles as well as adults. There is new legislation pertaining to juveniles now allow juvenile judges discretion regarding juvenile's registration. There are also new provisions allowing retroactive ~~Aunregistration@and Aderegistration@and Anon public@~~status, as well as providing that if treatment is ~~Asuccessfully completed@~~the duty to register is excused unless the state moves for a hearing on the matter. Since this topic is covered elsewhere this is only a summary regarding registration records.

(1) Sex offender records are public information.

(2) A juvenile is required to register for 10 years after he exits the system.

(3) When the duty to register expires the records remain in the system, unless they are sealed.

(4) Sec 58.003(n) exempts Sex Offender records from sealing as long as duty to register remains in effect. When that ends, they can be sealed unless they are Determinate Sentencing records.

(5) **New**: Art. 62.14: Removing Juvenile Registration Information When the Duty to Register Expires - new article establishes requirements and procedures for the DPS regarding the removal of all information in the sex offender registry when registration no longer required.

X. DNA Records: Juveniles adjudicated for an offense for which registration is required as a sex offender are also required to provide a blood sample to the DPS for the DNA database.. This applies to juveniles put on probation, as well as juveniles who are committed to TYC., however it only applies to juveniles who are required to register, thus if a juvenile is excused from registration by the juvenile court he will not be required to provide a blood sample. This requirement was made retroactive to include juveniles placed on probation or TYC parole prior to the amendment in 2001.

(1) DNA database is confidential and not subject to open records request.

(2) DNA records of a juvenile could be sealed in an appropriate case.

XI. Destruction and Sealing of Files and Records

(1) Records Destruction

1. Destruction of records is required if:

- a. Child not referred to juvenile court
- b. No probable cause found

2. Destruction is authorized if:

- a. Records do not relate to felony or jailable misdemeanor
- b. Records were previously sealed
- c. Subject becomes 21 without felony conviction

(2) Records Sealing

1. Three ways of sealing initiated under 58.003(a):

- a. On application of person who is the subject of the records
- b. On the court's own motion
- c. On receipt of DPS certification that records are eligible. Upon receipt of this notification, the court shall order sealing of the records in the case. This is done by the court without notification and hearing.

2. Whether sealing is permitted depends on the charge and the circumstances under which the case terminated:

- a. Determinate Sentence - Sealing is never permitted. 58.003(b)
- b. Other Felony Adjudication - Permitted at discretion of the court if the person is 21, was not transferred to adult court (certified), his records have not been used in punishment in adult court, and person has not been convicted of a felony after age 17. 58.003(c)
- c. Misdemeanor Adjudication or No Adjudication - Court required to seal if 2 years have elapsed and person has not been convicted of a felony or a misdemeanor involving moral turpitude, or has not been adjudicated delinquent or CINS, nor is any proceeding pending. 58.003(a)
- d. Non felony Adjudications and No Adjudications - Court has discretion to seal at anytime after final discharge of person. 58.003(d)
- e. Mandatory Sealing - Sealing required when child found not guilty. 58.003(d)

3. When court orders sealing:

- 1. All records ordered sealed shall be sent to the court
- 2. All index references shall be deleted and verification sent to court
- 3. Above done by 61st day after order received
- 4. If not possible because order contains insufficient information, court must be notified within 61 days and court must notify parties.

4. Effects of Sealing: A person whose records have been sealed is not required ...to state that [he] has been the subject of a juvenile proceeding. He can deny it ever happened. He can lie about his record.

1. All entities who had records shall properly reply that no such record exists.

2. The adjudication is vacated and the proceeding dismissed.

5. The records can be reopened by the subject to correct any misinformation.

6. A prosecuting attorney can reopen a sealed felony adjudication to prove a prior felony adjudication. Presumably the prosecutor will find out some other way, because all the indexes would have been deleted.

7. DPS can inspect a sealed record to determine eligibility for concealed

handgun

8. Upon final discharge of his case, juvenile must be given a written explanation of his rights to seal

9. There are some special sealing/expunction provisions applicable to cases in the Municipal and JP courts. Art 58.01 CCP.

(3) Restricted Access to Juvenile Records: New provision, enacted in 2001, which operates to automatically restrict access to juvenile records without the juvenile having to ask the court to seal the records. The DPS is required to periodically search their computerized database to identify which records are eligible and then to restrict access in JJIS and then to certify to the juvenile court or juvenile probation department that those records must be placed on restricted access. Access to those records is thereafter limited to a criminal justice agency. The system is designed to operate without the participation or even the knowledge of the person whose records are restricted.

XII. Communicating Information to Schools: Art 15.27 CCP creates a system of notification whereby the juvenile justice officials are required to notify the schools when a child is taken into custody and adjudicated. School officials are required to notify law enforcement regarding offenses taking place on school property.

1. Notification is required for all felonies, all weapons cases, all drug cases, false imprisonment, indecent exposure, assault, deadly conduct, terroristic threat and engaging in organized criminal activity. See list in 15.27(h) CCP

2. Schools are notified prior to adjudication by the police and after adjudication by the prosecutor's office.

3. New Law: adds deferred prosecution as a disposition required to be reported to the schools. Previously only Adjudications@were reportable. Applies to offenses occurring on or after 9-1-03.