

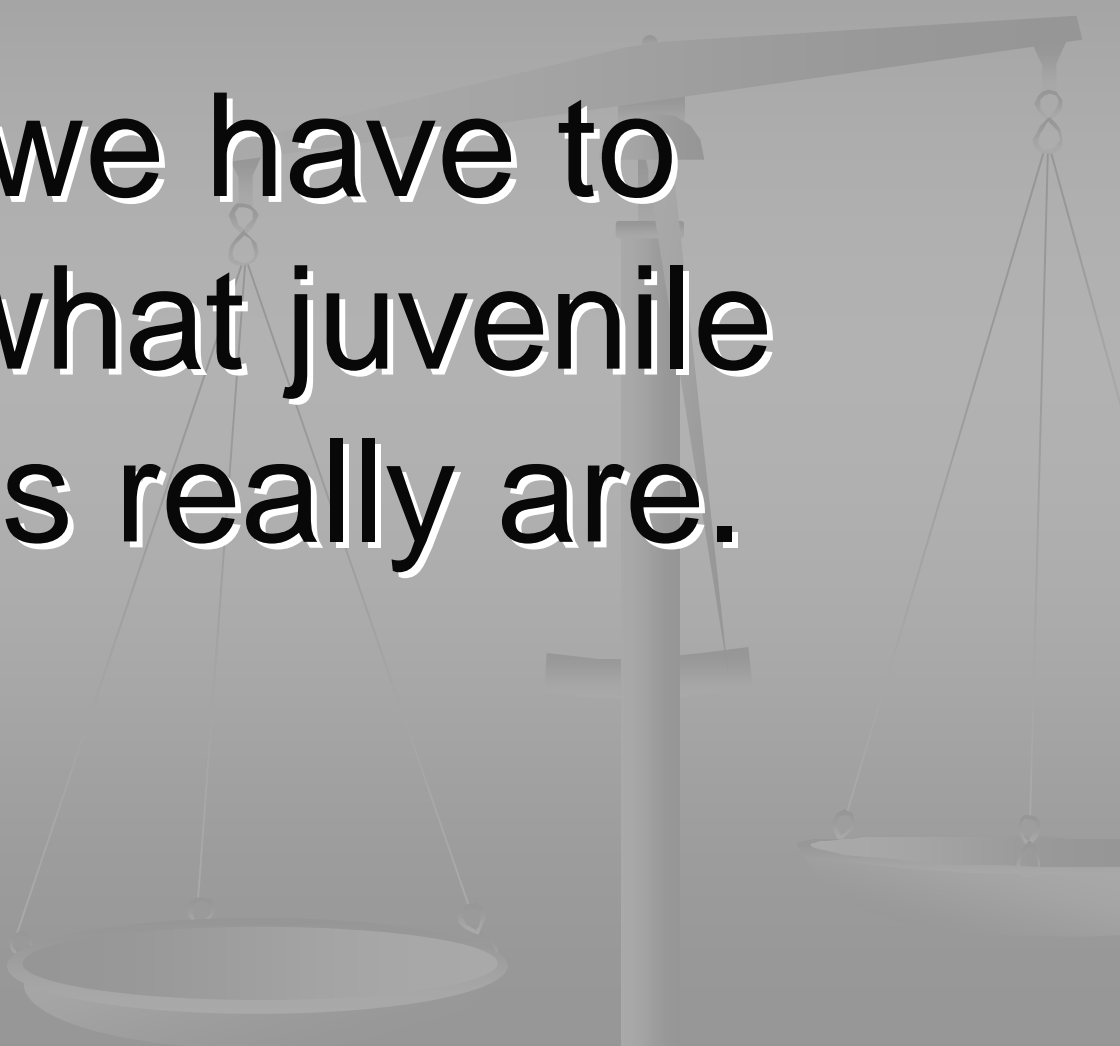


SEALING OF JUVENILE RECORDS

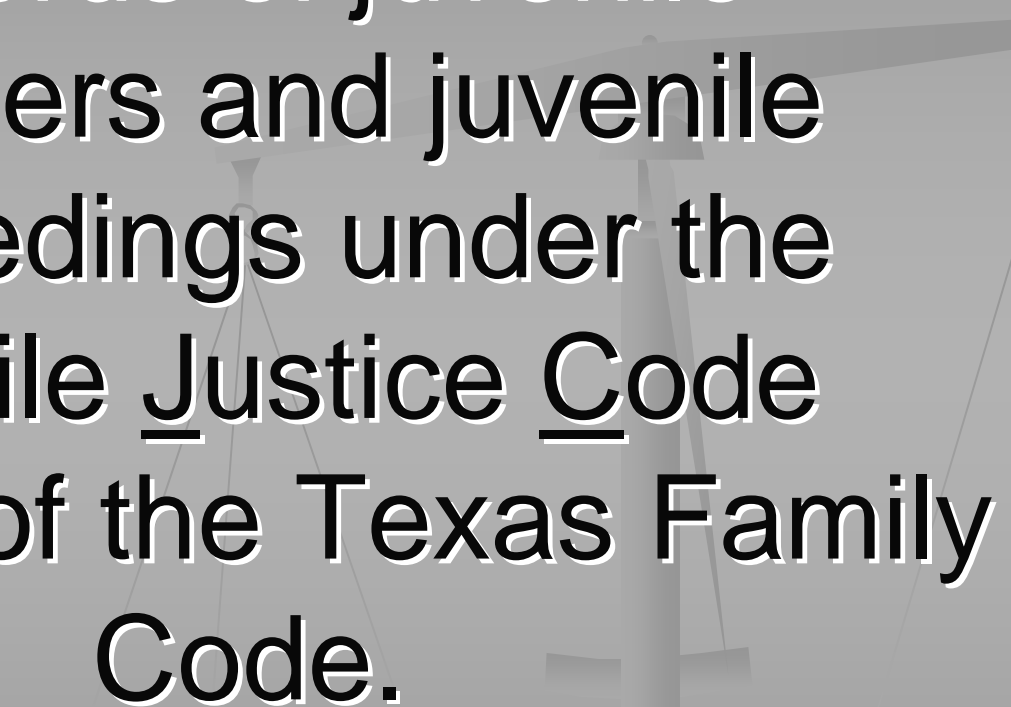
A faint, light gray background image of a pair of scales of justice, positioned on the right side of the slide.

Presented by
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As of the 1st of October with the
Texas Attorney General's Office
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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.



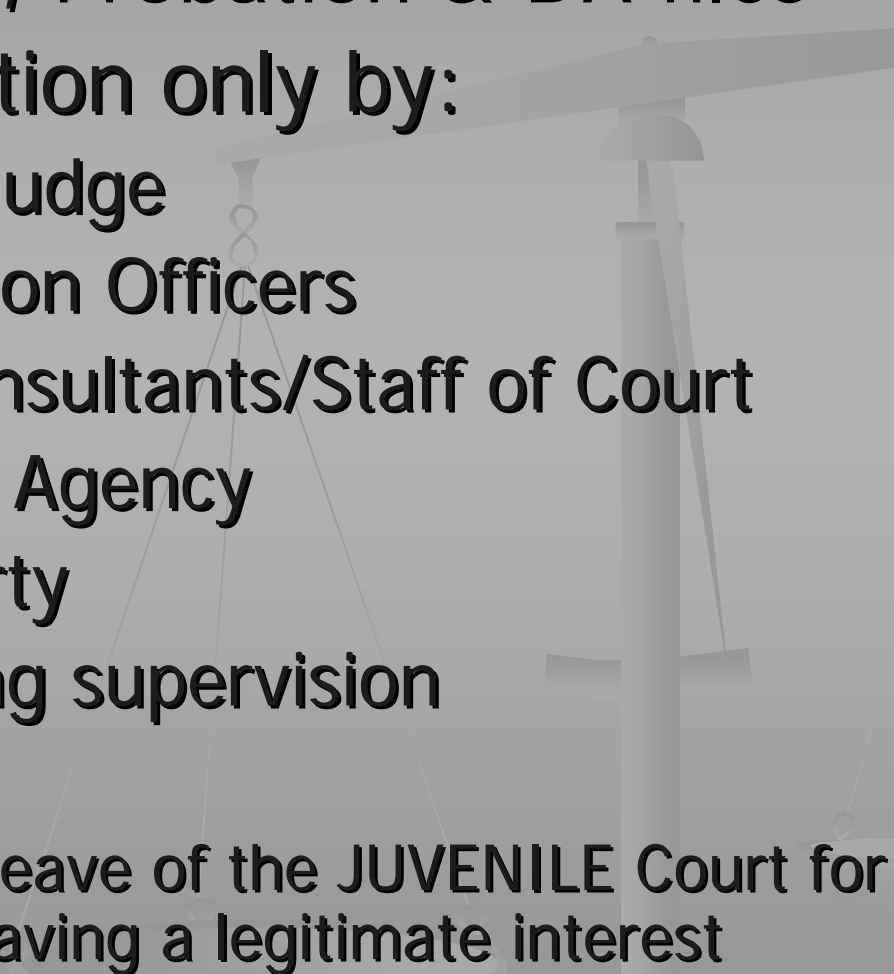
- They are not:

- 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



**“AUTOMATIC”
SEALING
PROVISIONS**

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**
 - **Exception under 15.27 CCP for school notices**

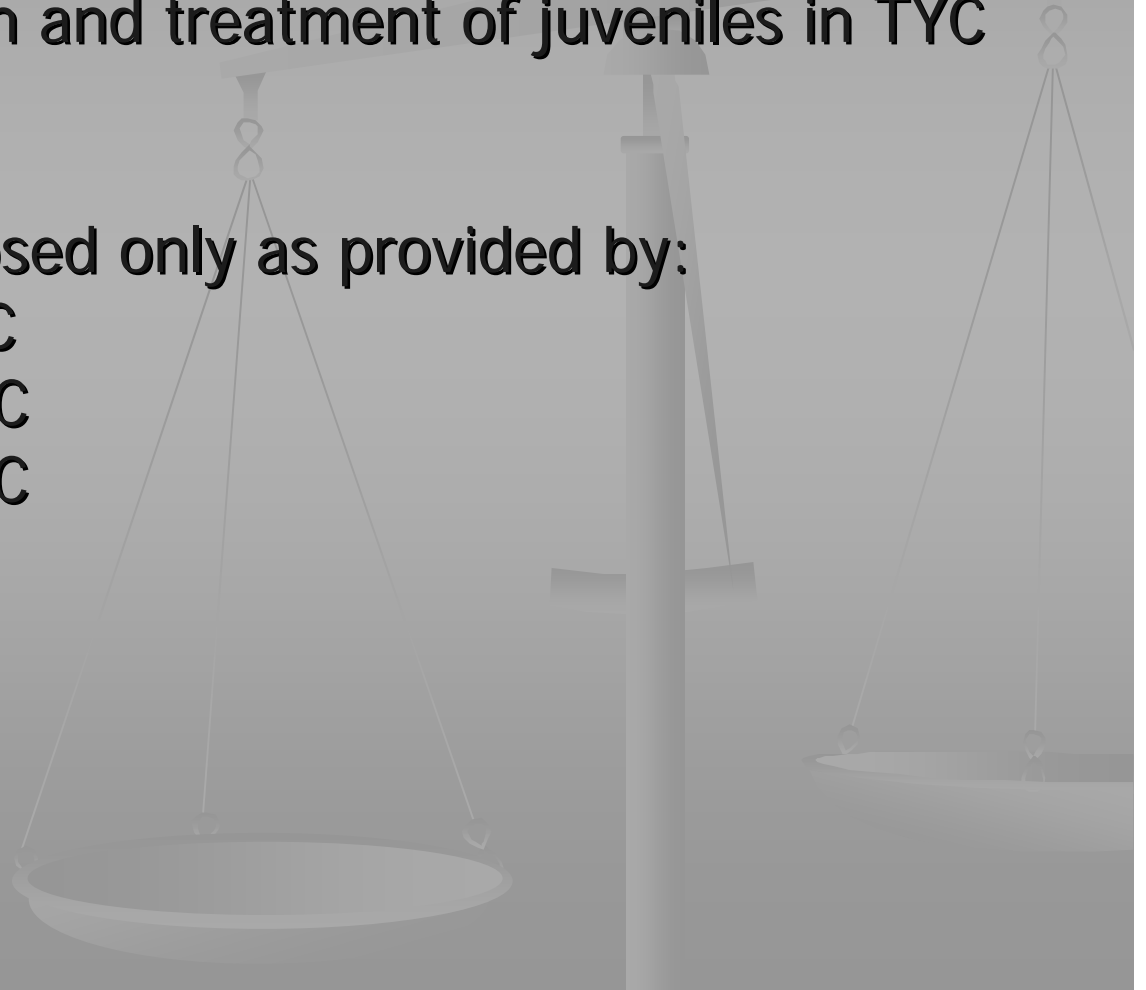
58.005 Texas Family Code

- 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

- MAY be disclosed only as provided by:
 - 58.005 TFC
 - 61.093 HRC
 - 61.095 HRC



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

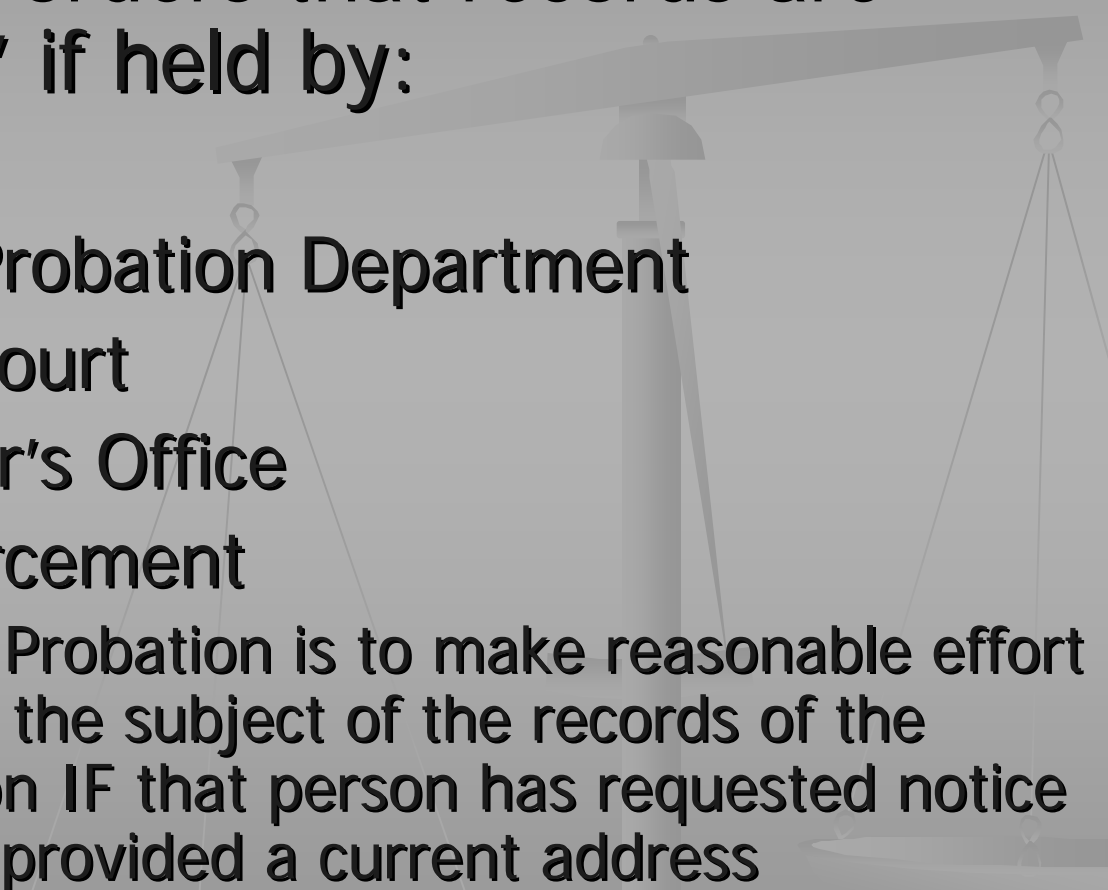


**THE OTHER
“CERTIFICATION”**

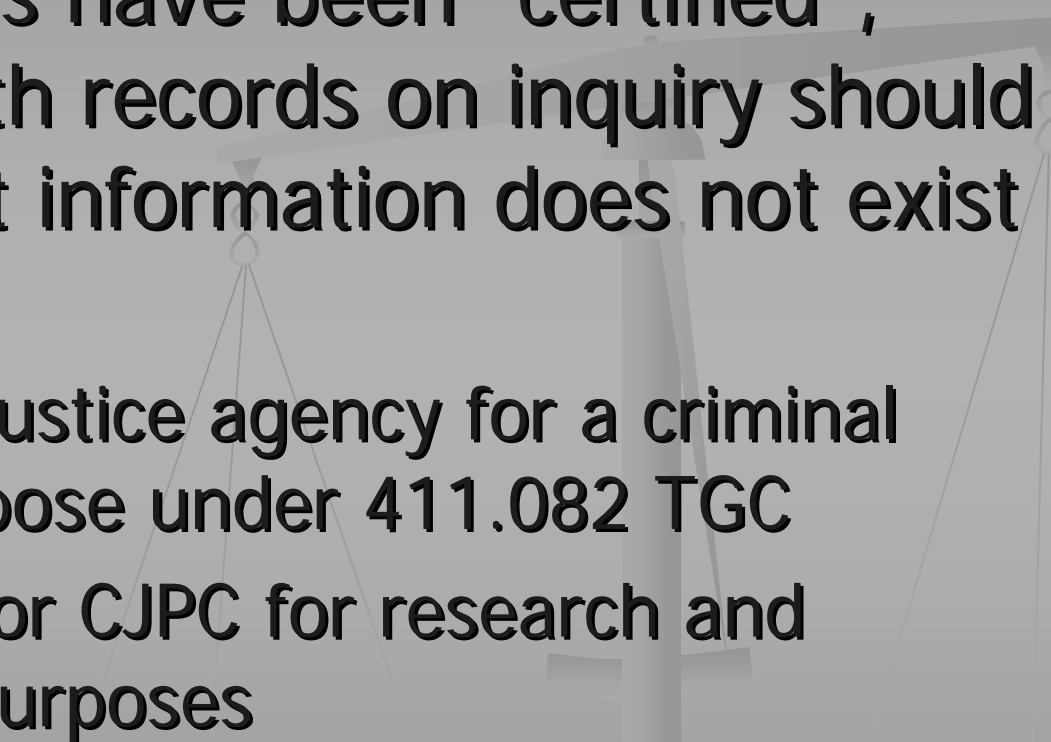
58.203 TFC - Certification

- 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
 - 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

58.203 TFC - Certification

- Court then orders that records are “restricted” if held by:
 - TYC
 - Juvenile Probation Department
 - Clerk of Court
 - Prosecutor’s Office
 - Law Enforcement
 - Juvenile Probation is to make reasonable effort to notify the subject of the records of the restriction IF that person has requested notice and has provided a current address
- 

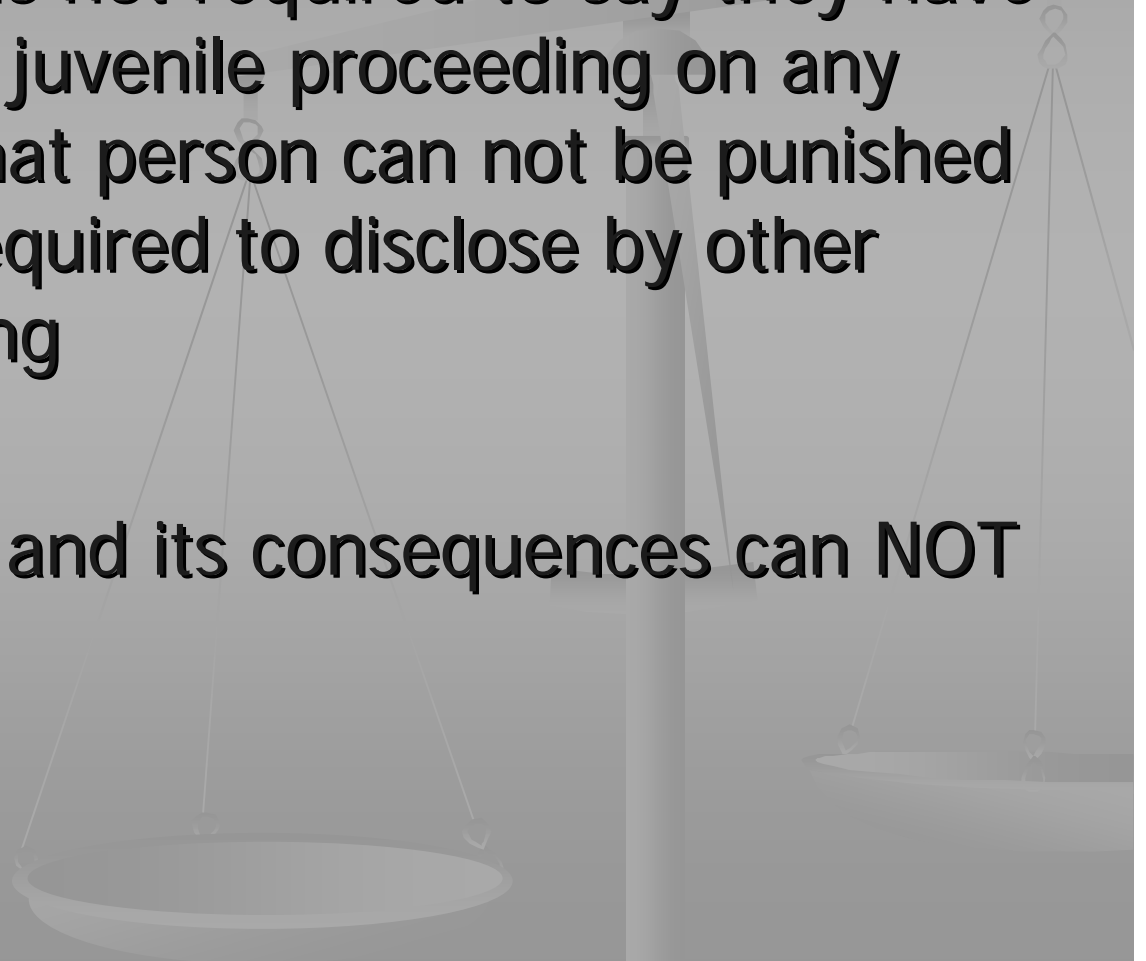
58.204 TFC - Restricted Access

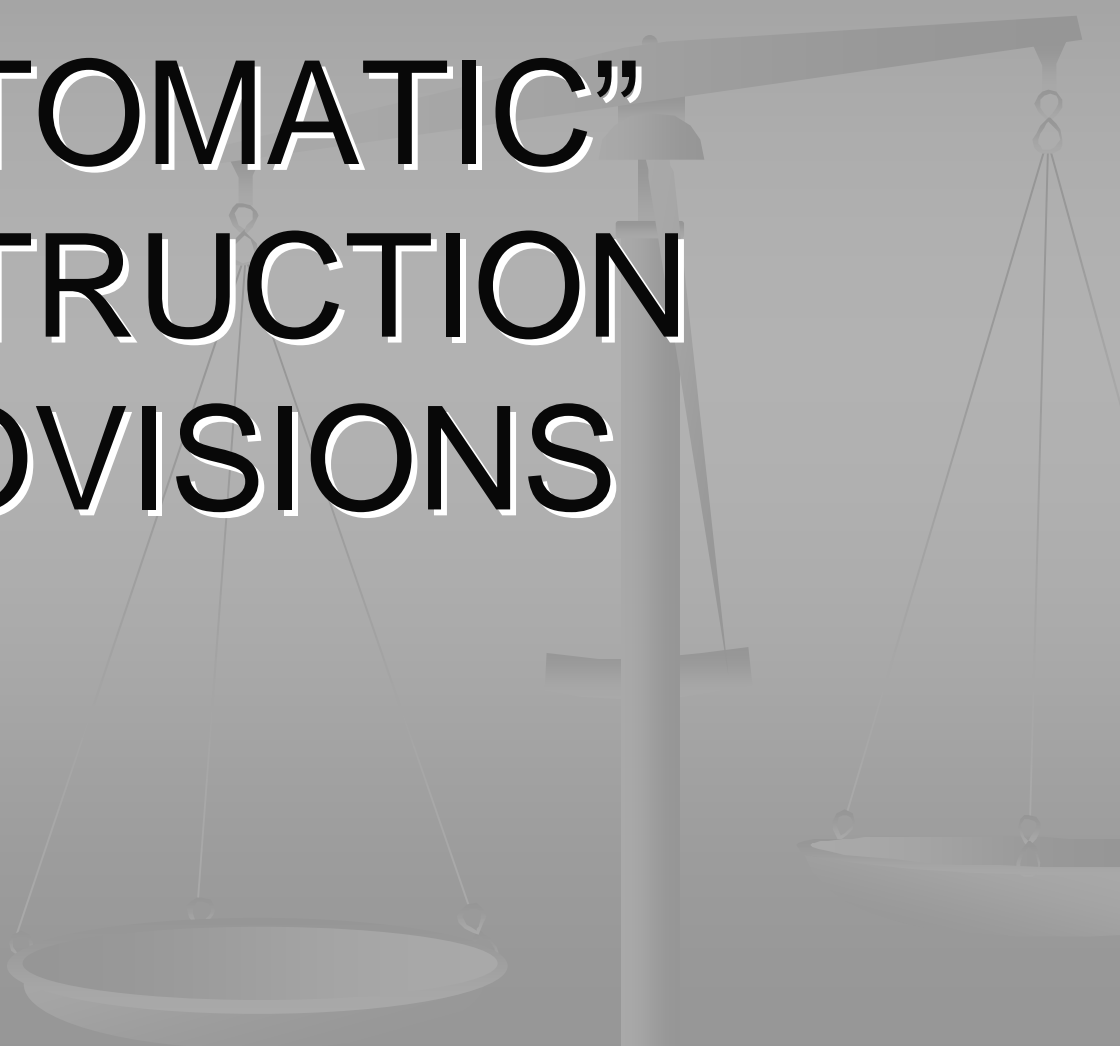
- Once records have been “certified”, agencies with records on inquiry should indicate that information does not exist except to:
 - A criminal justice agency for a criminal justice purpose under 411.082 TGC
 - TJPC, TYC or CJPC for research and statistical purposes
- 

58.206 TFC - Effect of Certification

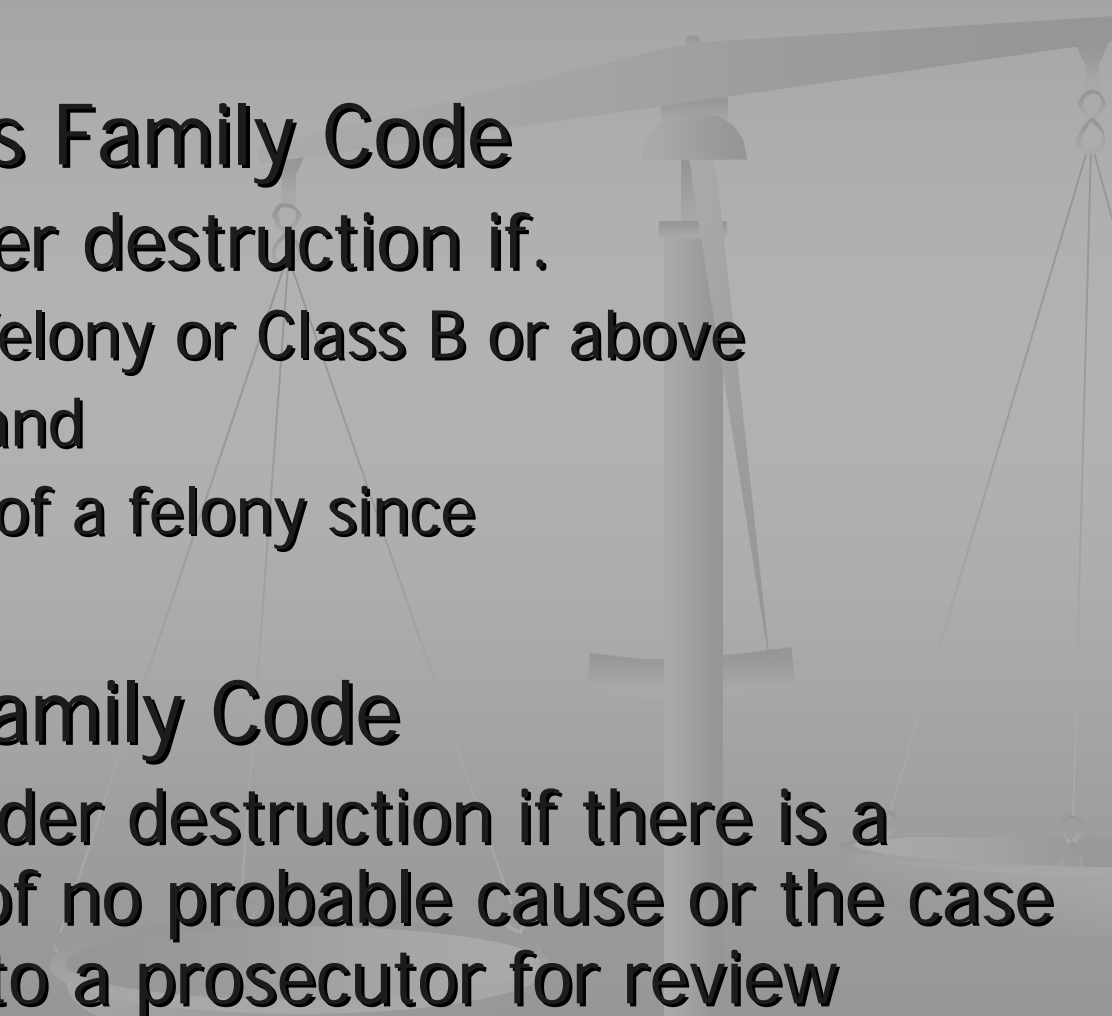
A person who is the subject of records with restricted access is not required to say they have been a party to a juvenile proceeding on any application and that person can not be punished for such unless required to disclose by other criminal proceeding

Restricted access and its consequences can NOT be waived





**“AUTOMATIC”
DESTRUCTION
PROVISIONS**

- 
- **58.001(c) Texas Family Code**
 - Law enforcement required to destroy all juvenile information unless referral made within 10 days

 - **58.003 (I) Texas Family Code**
 - Court **MAY** order destruction if.
 - Case is not a felony or Class B or above
 - Person is 21, and
 - No conviction of a felony since

 - **58.006 Texas Family Code**
 - Court **SHALL** order destruction if there is a determination of no probable cause or the case is not referred to a prosecutor for review

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COURT ORDERED SEALING PROVISIONS

58.003 TFC - Sealing

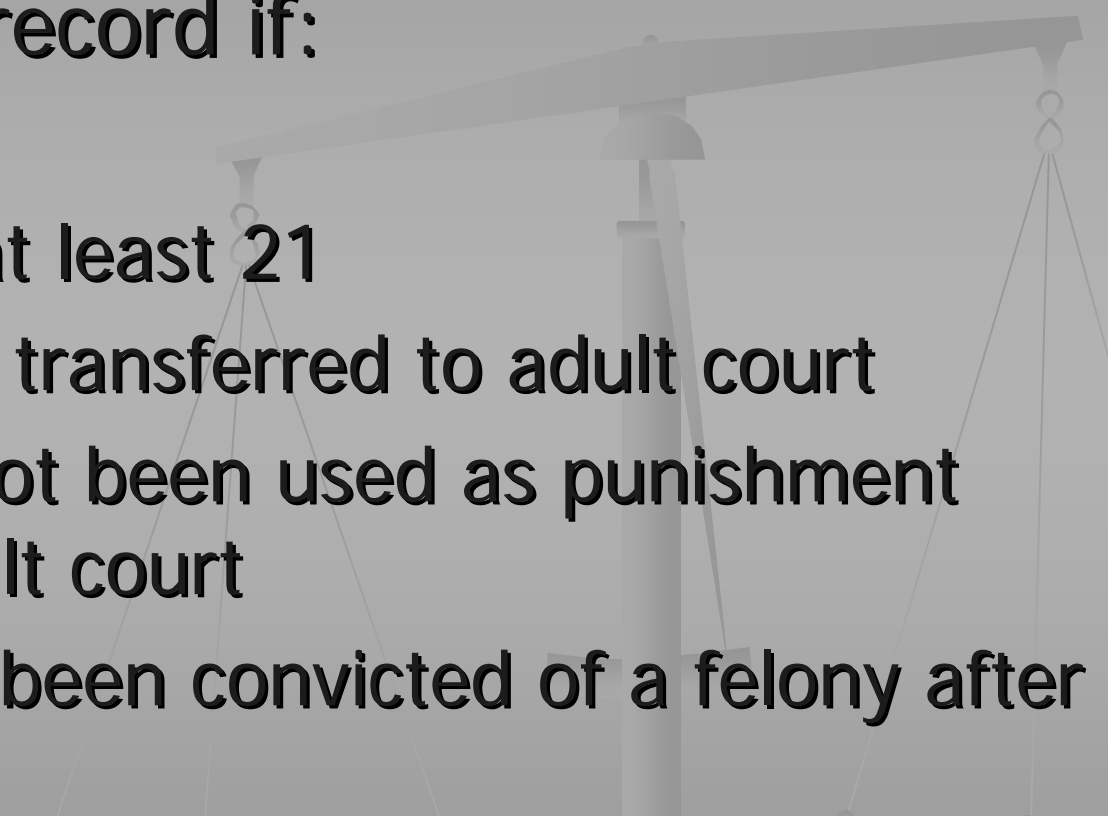


- **Application must contain:**
 - **Full name/sex/DOB/race**
 - **DL or ID #**
 - **SS #**
 - **Offense charged or referred**
 - **Offense date and county where committed**
 - **Case number and Court where petition, if any was filed**
 - **Or explanation why this info is not included**

58.003 TFC - Sealing

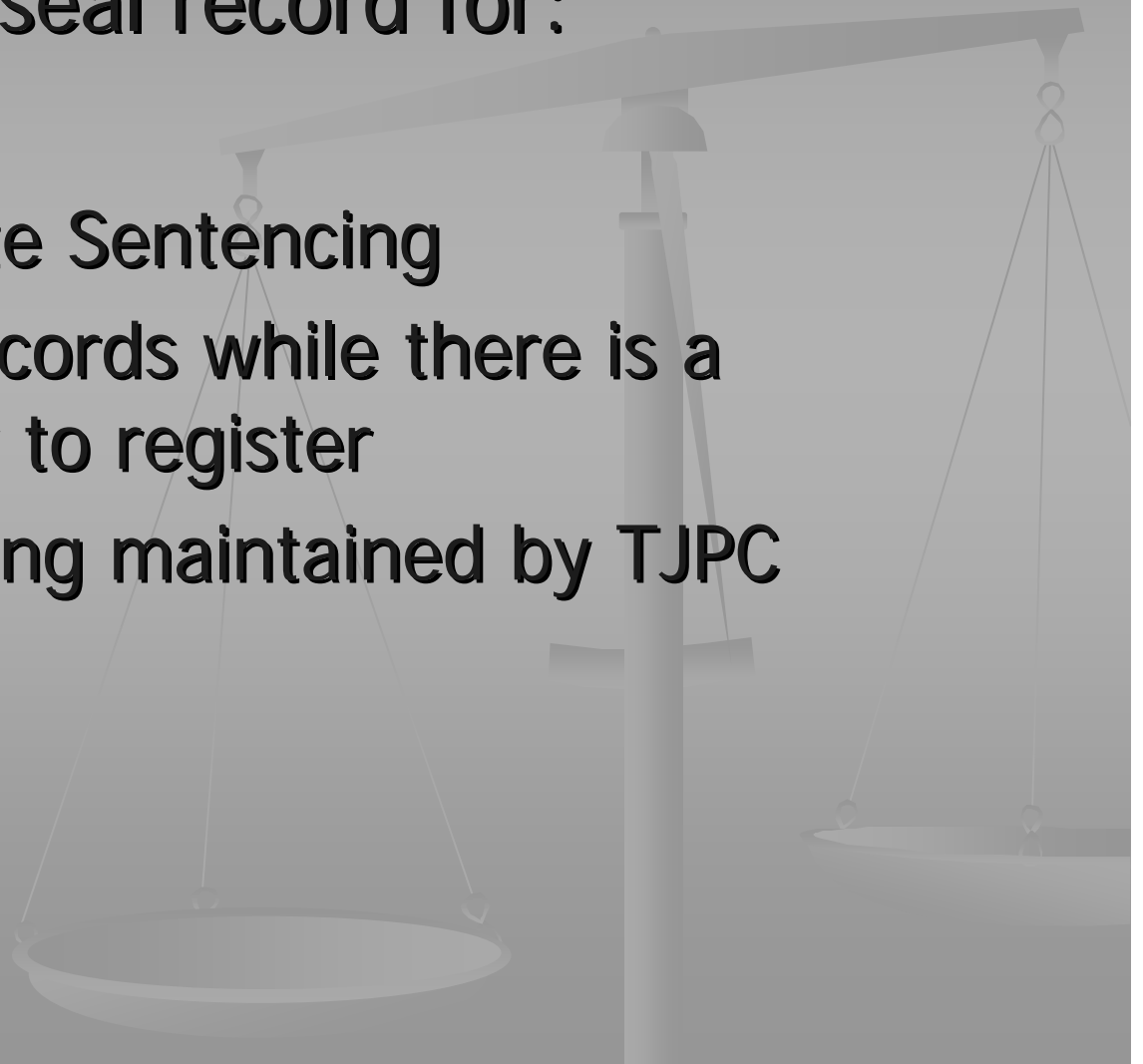
- Court SHALL seal record if:
 - Two years since final discharge on non felony offense or any charge that was not adjudicated and
 - No adjudication/conviction on any charge since and no action is pending or
 - Child was found not guilty
 - Court MAY seal record of any case that was not adjudicated at any time after final discharge

58.003 TFC - Sealing

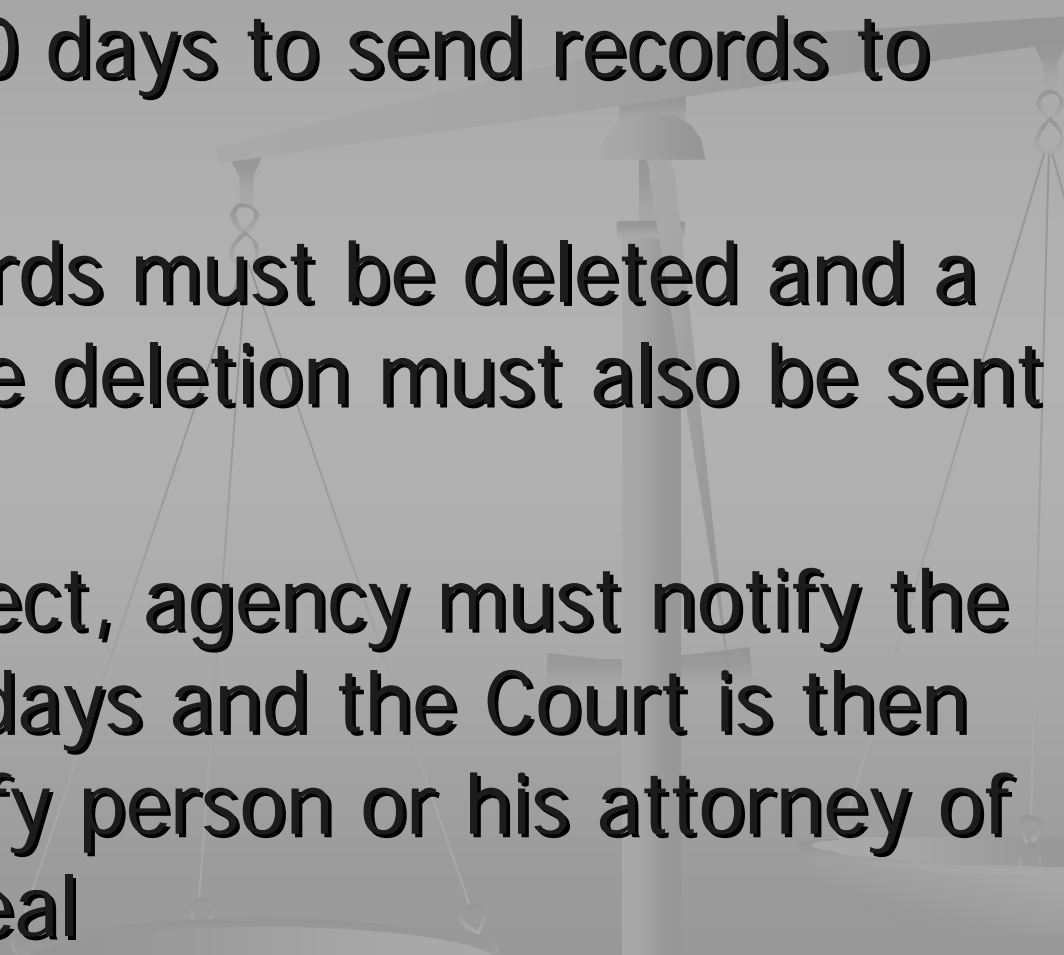
- Court **MAY** seal record if:
 - Felony offense
 - Person is now at least 21
 - Person was not transferred to adult court
 - Records have not been used as punishment evidence in adult court
 - Person has not been convicted of a felony after becoming 17
- 

58.003 TFC - Sealing

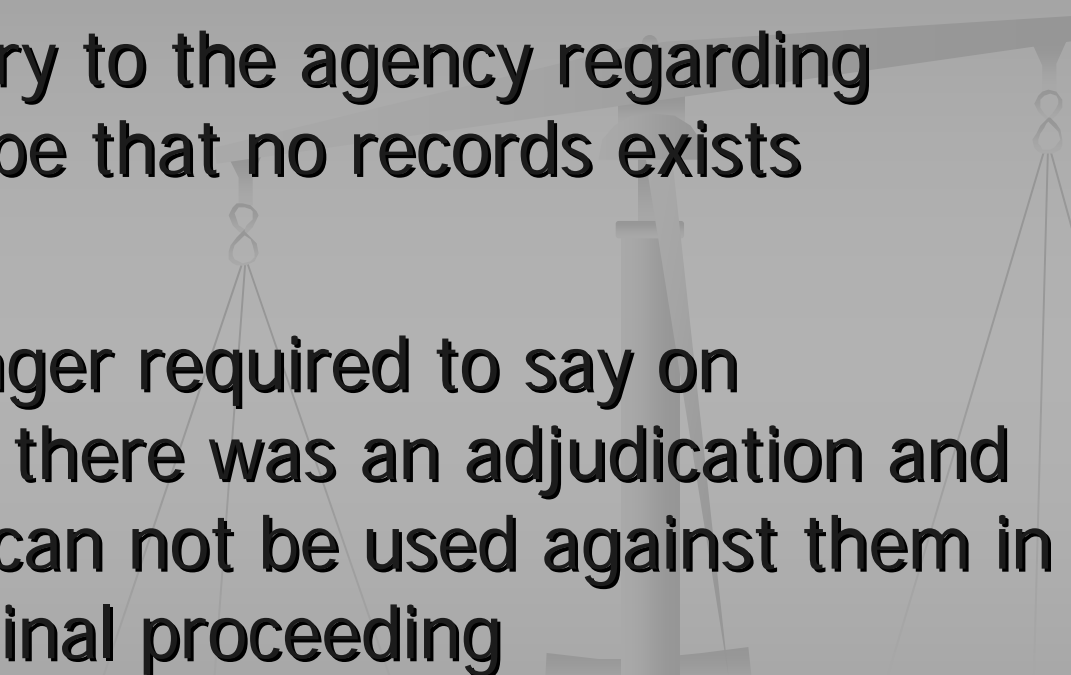
- Court CAN NOT seal record for:
 - Any Determinate Sentencing
 - Sex offender records while there is a continuing duty to register
 - Any records being maintained by TJPC



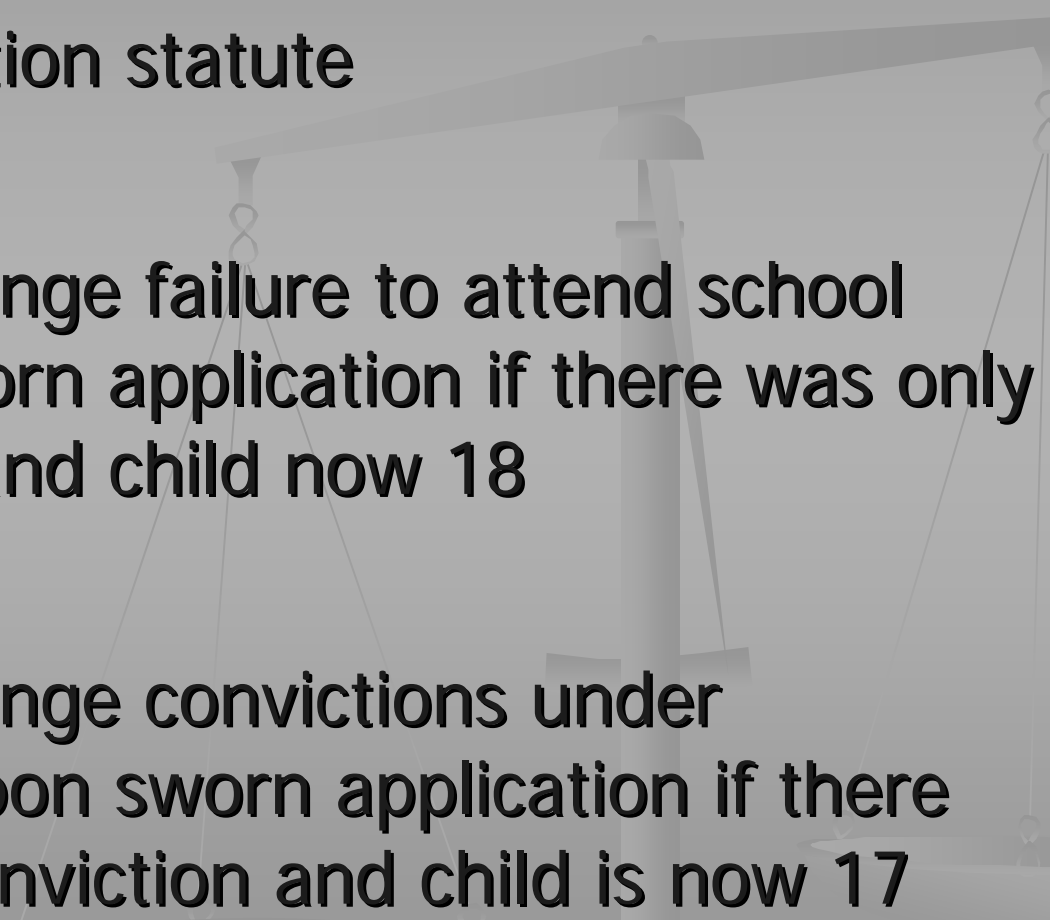
58.003 TFC - Sealing

- 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

- **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
- 

Expunction of JP/Muni Court Records

- 55.01 CCP
 - General expunction statute
 - 45.055 CCP
 - Court shall expunge failure to attend school record upon sworn application if there was only one conviction and child now 18
 - 45.0216 CCP
 - Court shall expunge convictions under 8.07(a)(4)(5) upon sworn application if there was only one conviction and child is now 17
- 

Expunction of JP/Muni Court Records

- **161.255 Health and Safety Code**
 - Tobacco Offenses

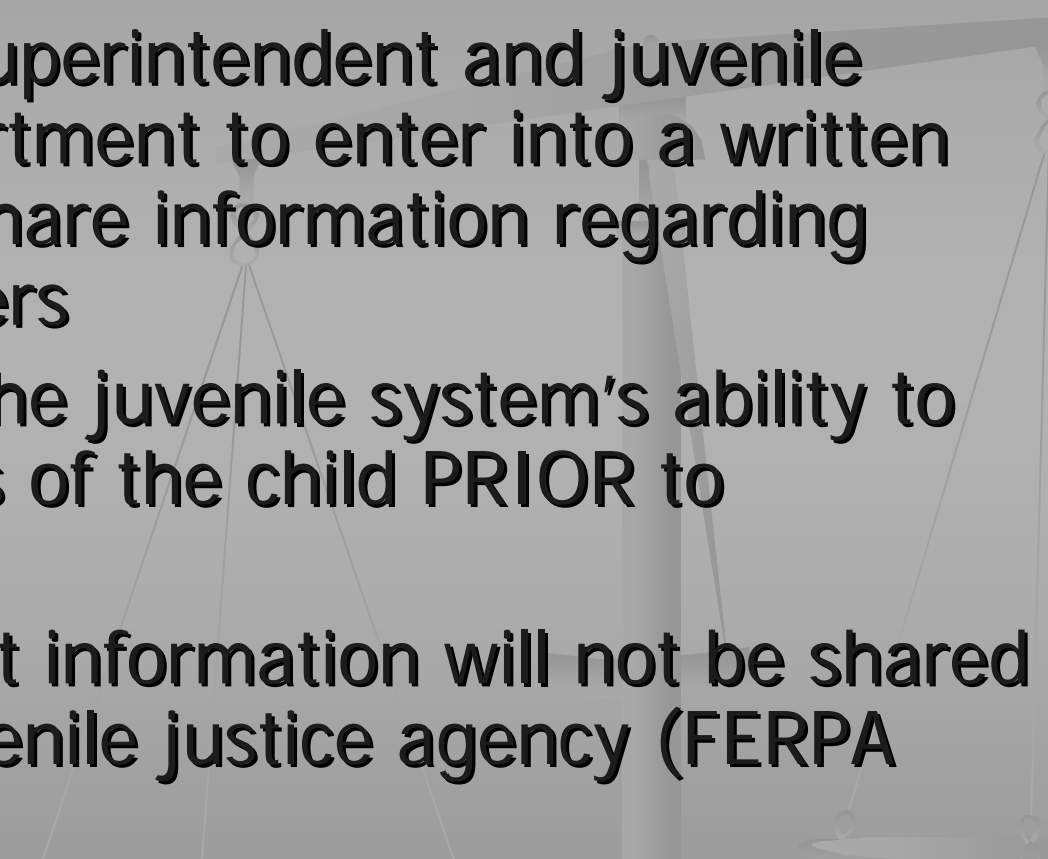
- **106.12 Alcoholic Beverage Code**
 - Alcohol Offenses



**RECORDS RECORDS
WHOSE GOT THE
RECORDS ?**

A faint, grayscale background image of a balance scale is visible behind the text. The scale is positioned on the right side of the frame, with its vertical pillar and horizontal beam extending across the middle. Two pans are suspended from the beam by thin wires. The overall image has a soft, ethereal quality.

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 Code of Criminal Procedure

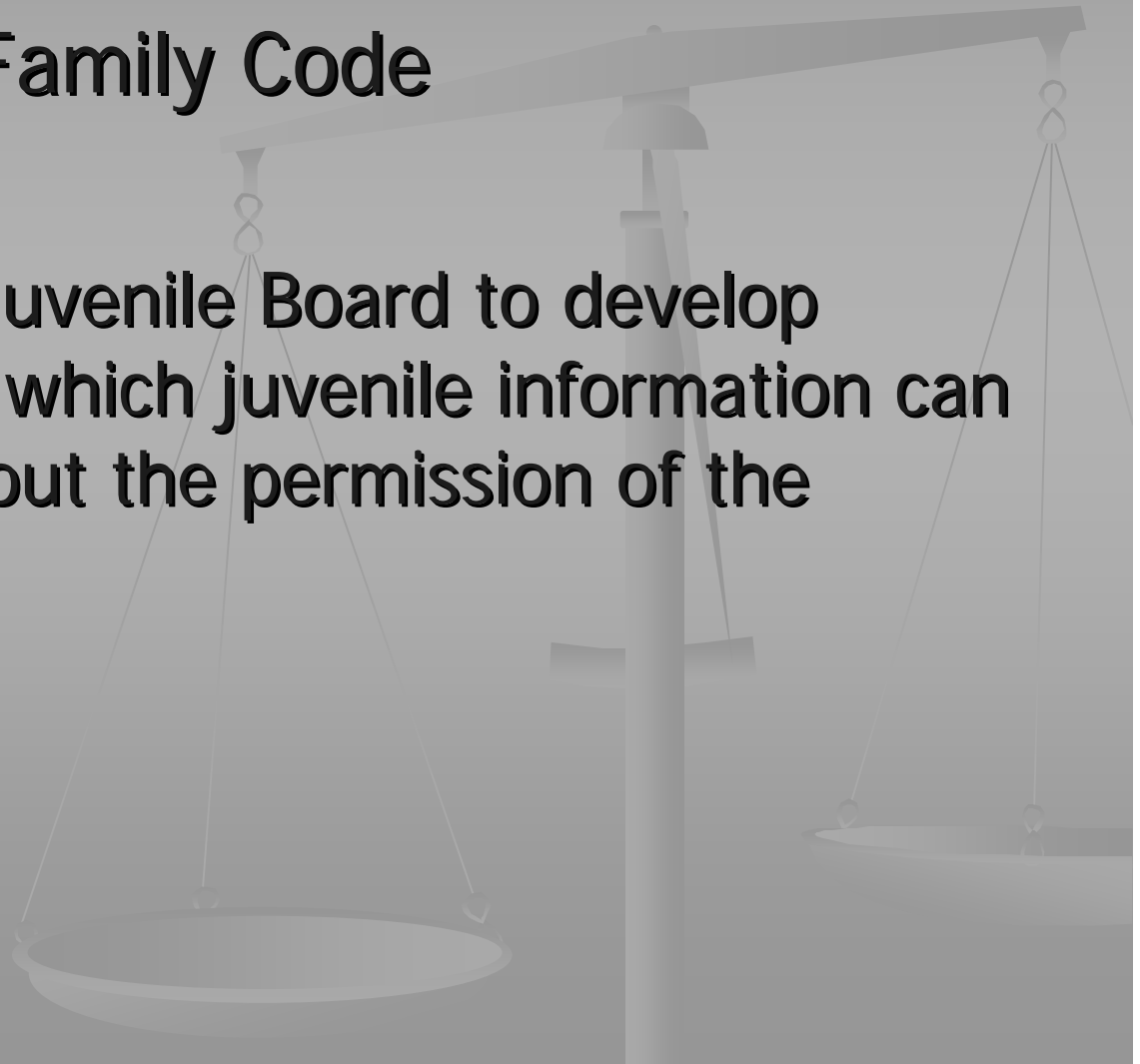
School Notice Letters

- 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

Juvenile Board Guidelines

- **58.007(i) Texas Family Code**

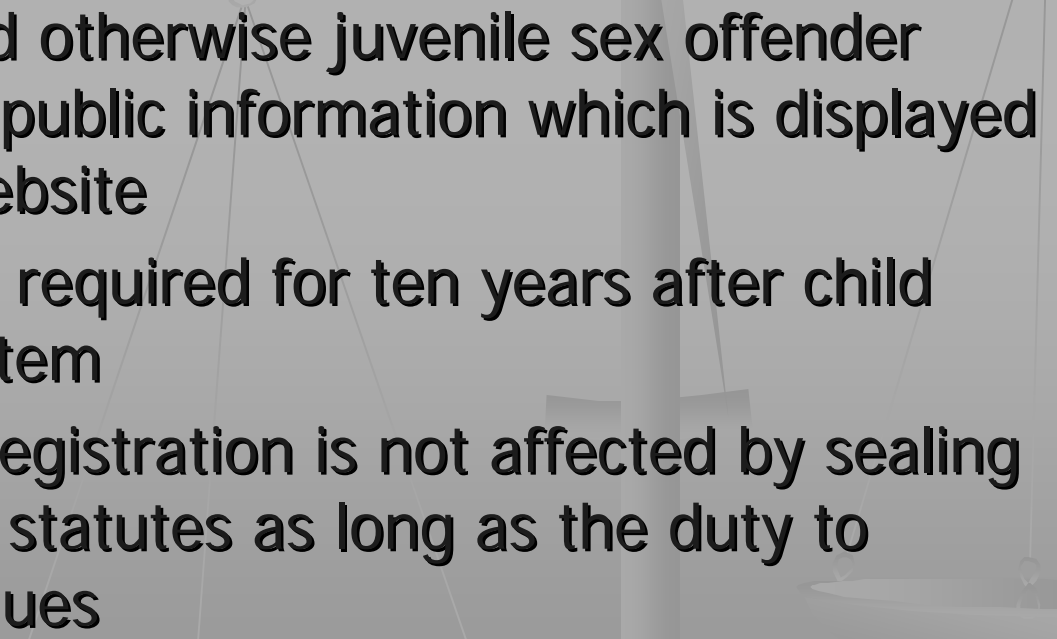
Allows the local Juvenile Board to develop guidelines under which juvenile information can be released without the permission of the Juvenile Court



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
 - 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
- 

Sex Offender Database

- 62.13 CCP

Deregistration/Unregistration

- Upon a filing of appropriate motion Court may make finding excusing need to register or may find that registration can be made nonpublic or is no longer necessary
- Upon such finding(s), the Court shall notify DPS, local law enforcement and each and every private or public agency that the respondent has proven has the registration information of the change in the requirement
- 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

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
- Collected information is provided to FBI database

Law Enforcement

- **58.001 TFC**

JJIS Confidentiality (or the lack thereof)

- **Information collected in JJIS may not be disseminated except to:**
 - **Military with juvenile's permission**
 - **As provided by 411.083 Texas Government Code**
 - **For analytical purposes to TYC, TJPC and the Criminal Justice Policy Council**

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

Law Enforcement



- 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
 - Must be removed if child has not been taken into custody or arrested in a two year period 61.07(b)

Law Enforcement



- DNA Database
 - 54.0405 (a)(2)(B) TFC
 - 411.150 Government Code
 - Requires juveniles placed on probation or committed to TYC for a registration offense to submit a blood sample to DPS for the purpose of DNA comparison
 - 411.151 Government Code
 - Allows for expunction under 55.01 and 55.02 of the Code of Criminal Procedure

**Well, I thought we
had records !**



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

Unsealing and Future Use



58.003 TFC - Sealing

- 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 processing concealed handgun applications

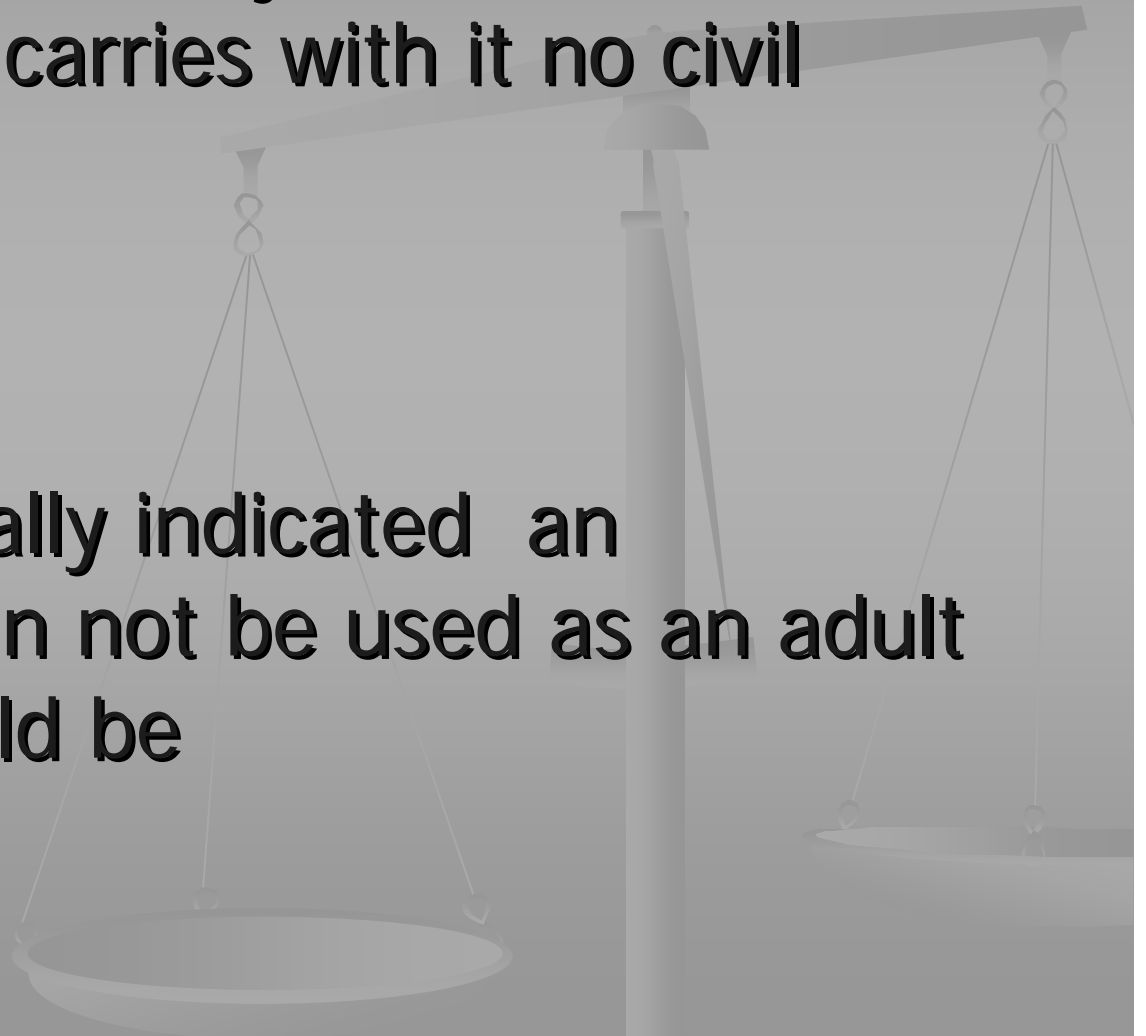
58.207 TFC – Rescinding Restriction

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.

The probation department is then required to notify all the agencies that had records that they are no longer restricted.

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
 - Witness may open the door

- Character Evidence

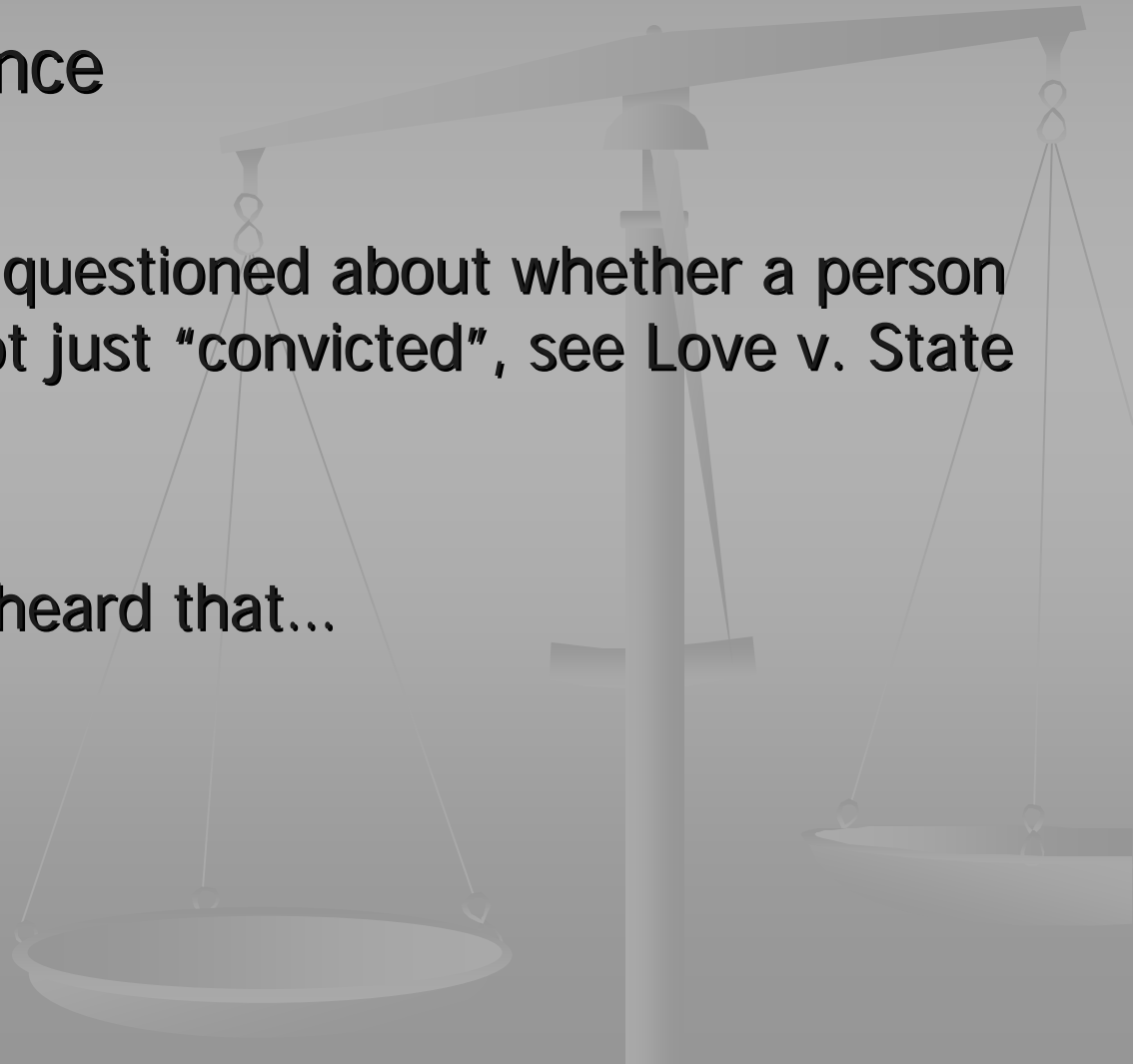
- Case law indicates that witness can be questioned about whether a person was arrested not just "convicted"

Using Juvenile Records

- In the Guilt/Innocence Phase

- Character Evidence

- Witness can be questioned about whether a person was arrested not just “convicted”, see *Love v. State* 533 SW2d 6.
 - Well, have you heard that...



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

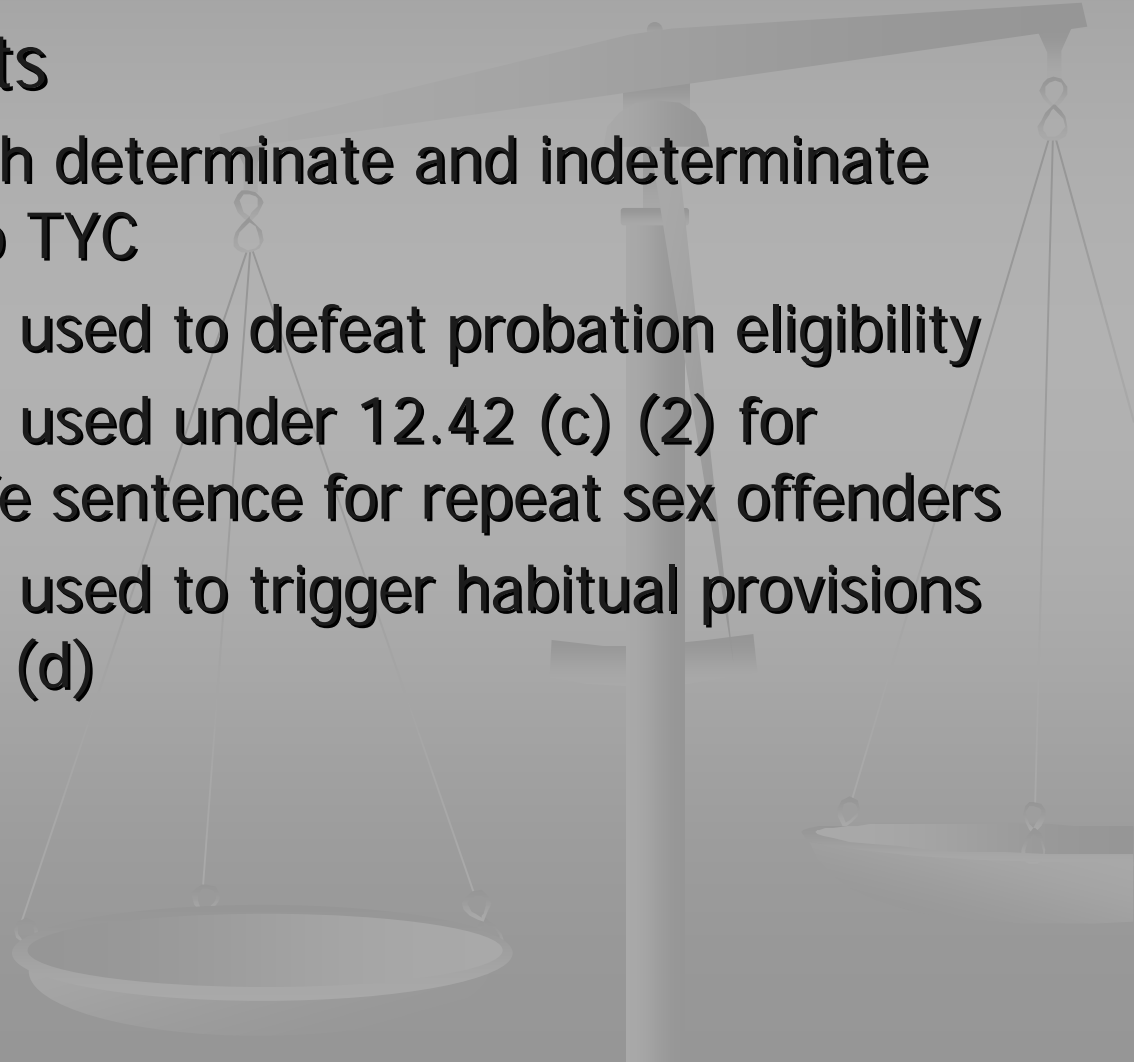
Using Juvenile Records

- In the Punishment Phase - 37.07 CCP
 - Enhancements

51.13 specifies that felony offenses that occurred after 01/01/96 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
&
I hope you enjoy the rest of the
conference.

Have a safe trip back home !