

Military Access to Juvenile Records



Joining the Military

**Joining the
military is not a
right it's a privilege**



Some Relevant Dates

- 9/11 inspired many young people to enlist
- 2001 - U.S. initiated military action in Afghanistan
- 2003 - U.S. entered Iraq
- 2003 to 2006 - military relaxes entrance requirements
- 2007 - U.S. pulls out of Iraq
- 2011 - U.S. begins drawing down forces in Afghanistan

Texas Law

Juvenile records are confidential and cannot be shared unless specifically authorized by law.



Unsealed Records

Military can access confidential juvenile records under limited circumstances.

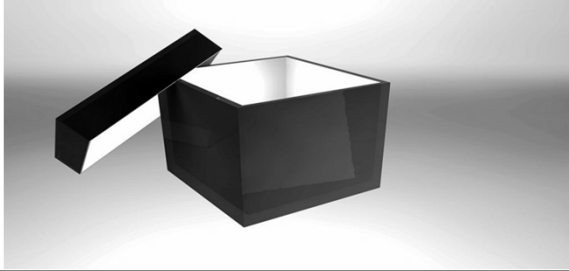
FC 58.007(b), FC 58.007(i), FC 58.106(a)



Sealed Records

- **In Texas, once a juvenile record is sealed, the adjudication is vacated and proceedings dismissed and treated as if they never occurred.** FC §8.02(c)
- **There is no provision under the TFC that permits the military access to sealed records.**

Sealing Process in a Nutshell



Military Law

Article 83 of the UCMJ states, inter alia, that

*"Any person who...
procures his own enlistment or appointment in the armed forces by
knowingly false representation or deliberate concealment as to his
qualifications for that enlistment or appointment and receives pay or
allowances thereunder.....shall be punished as a court-martial may
direct."*

Waiver

**The military can choose to waive
certain offenses**

Adverse Adjudication

**No guarantees when it
comes to waivers**



Military Enlistment Standards

**Recruitment is like a
rollercoaster**



The Enlistment Process

Question - Yes or No. *“Have you ever been told by anyone (judge, lawyer, any army personnel, family friends etc.) that you do not have to list a charge because the charge(s) were dropped, dismissed, not filed, expunged, stricken from the record or were juvenile related?”*

Source: Army Enlistment Security Questionnaire

Source: Army Enlistment Security Questionnaire.

[illegible]

Warning Sign at Recruitment Station

The information you have given constitutes an official statement

WARNING

1. THE INFORMATION YOU HAVE GIVEN CONSTITUTES AN OFFICIAL STATEMENT.
2. FEDERAL LAW PROVIDES SEVERE PENALTIES (UP TO 10 YEARS CONFINEMENT OR FINE) FOR PERJURY, TO ANYONE MAKING A FALSE STATEMENT.
3. IF YOU ARE SELECTED FOR ENLISTMENT, COMMISSION OR ENTRANCE INTO A COMMISSIONED PROGRAM BASED ON A FALSE STATEMENT, YOU MAY BE SUBJECT TO PROSECUTION UNDER THE UNIFORM CODE OF MILITARY JUSTICE OR TO ADMINISTRATIVE SEPARATION PROCEDURES FOR A DISHONORABLE DISCHARGE, AND COULD RECEIVE A LESS THAN HONORABLE DISCHARGE.

AUTHORITY: U.S.C. 89, 96; 18 U.S.C. 970B; 32 U.S.C. 107-105; 10 U.S.C. 1075

WARNING


1. THE INFORMATION YOU HAVE GIVEN CONSTITUTES AN OFFICIAL STATEMENT.
2. FEDERAL LAW PROVIDES SEVERE PENALTIES (UP TO 5 YEARS CONFINEMENT OR \$10,000 FINE OR BOTH) TO ANYONE MAKING A FALSE STATEMENT.
3. IF YOU ARE SELECTED FOR IMMIGRATION COMMISSION OR ENTRANCE INTO A COMMISSIONING PROGRAM BASED ON A FALSE STATEMENT, YOU MAY BE SUBJECT TO REMOVAL FROM THE UNITED STATES AND YOUR IMMIGRATION AND ADMINISTRATIVE SEPARATION PROCEEDINGS WILL BE REOPENED, AND COULD BECOME A LESS THAN HONORABLE DISCHARGE.

AUTHORITY: U.S.C. 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

[illegible]

Disclosure of Criminal History

**Disclosure of
criminal history will
delay the process**

[illegible]

MEPS

Military Entrance Processing Station

Message from the Recruiter



The Enlistment Contract

'My acceptance for enlistment is based on the information I have given in my application for enlistment. If any of that information is false or incorrect, this enlistment may be voided or terminated administratively by the Government, or I may be tried by Federal, civilian, or military court, and, if found guilty, may be punished.'



Source: Enlistment contract (DD Form 436)

Security Clearance

Information not disclosed when initially enlisting may be disclosed at a later time if the person pursues a position requiring a security clearance.

Source: <https://www.dhs.gov/privacy/security-clearance-records-1330907>



Preserving the Military Option



Get a high school diploma



Get Fit



Avoid tattoos



Prepare for the ASVAB

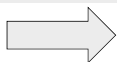


Test the waters



Weigh the Pros and Cons of Disclosing Sealed Records





Question - Yes or No. *"Have you ever been told by anyone (judge, lawyer, any army personnel, family friends etc.) that you do not have to list a charge because the charge(s) were dropped, dismissed, not filed, expunged, stricken from the record or were juvenile related?"*

Source: Army Enlistment Security Questionnaire

MILITARY ACCESS TO JUVENILE RECORDS

Betty E. Rodriguez, Attorney at Law

700 Lavaca Street, Ste. 1400

Austin, Texas 78701

Telephone: (512)-826-5990

www.defendingjuveniles.com

Email: bettyrodriguezlaw@gmail.com

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MILITARY ACCESS TO JUVENILE RECORDS

Introduction

When it comes to joining the armed services, the military considers it a privilege and not a right. The common thought of many juvenile clients and their parents is that a juvenile record will not affect their chances of getting into the military. I recently asked one of my clients who was in detention what he wanted to do with his life. He replied, “what I **really** want to do is get a job; I want to graduate from high school, get a diploma, make good money, and stay out of trouble, **and** if I can’t do any of that, I’ll just join the Army.” I then asked him why he thinks he can join the Army if he can’t pursue his other goals; he replied, “because all of this juvenile stuff doesn’t count.” A juvenile’s criminal record does count when it comes to the military.

The courts have held that “the military is, by necessity, a specialized society separate from civilian society,” and they have historically deferred to the judgement of military leaders on matters affecting the Armed Forces [including who they let in].² Considerations for who serves include mental and physical well being, education and criminal history. The military requires that all of an applicant’s criminal history including their juvenile records, sealed and unsealed, be disclosed. There is no such thing as a “sealed” record as far as the military is concerned,³ and the applicant’s criminal history is considered when making a determination on whether the individual is morally fit to serve under military standards.⁴

Under Texas law, once a juvenile record is sealed, it is treated for all purposes as though it never occurred. The military, on the other hand, imposes a legal obligation to disclose sealed and unsealed information. These conflicting positions are a source of confusion and differing opinions on how best to advise

clients when they ask about joining the military. As juvenile practitioners, we should have a good understanding of the military's ability to access juvenile records and a person's obligation to disclose records even after they have been sealed. Knowledge of current military standards and the enlistment process can also help preserve the military option for the client.

My objective is to give you a framework with which to guide your clients when they ask about joining the military based on my research and interviews with recruiters and veterans, and reading numerous military blogs and articles. In the past, when a client asked me if he/she would be able to join the military with a juvenile record, my standard answer was "seal your records and you should be fine." The reality is, it's just not that simple.

Texas Law

The Texas Family Code (TFC) defines a "record" as any documentation related to a juvenile matter, including information contained in that documentation. These records, whether they are sealed or unsealed, are confidential and cannot be shared or inspected unless specifically authorized by law.⁵

Unsealed Records

With regards to unsealed records, the military has the ability to access them as follows:

- Records of a juvenile court, clerk of court, juvenile probation department, or prosecuting attorney are open to inspection and copying by anyone with a legitimate interest, [including the military] in the proceeding or work of the court with permission of juvenile court.⁶
- The juvenile probation department may release information contained in its records, without leave of court, [to the military or to anyone else] with a legitimate interest pursuant to guidelines adopted by the juvenile board.⁷

- The Texas Department of Public Safety (DPS) can share confidential information stored in its Juvenile Justice Information System (JJIS) with military personnel with permission of the juvenile. DPS may only share information that is in the JJIS and not the underlying documents that contained the information.⁸
- The Texas Family Code does not give law enforcement the authority to release juvenile records to the military; however, law enforcement records relating to a juvenile may be inspected or copied by the juvenile who can then provide them to the military recruiter or to anyone else.⁹
- During the enlistment process, if it is made known there is a criminal history, the juvenile may sign a release form giving the military access to his/her records.

Note: There is nothing in the TFC that is designed to allow the military to force the juvenile to give unsealed records to the recruiter.

Sealed Records

Once a juvenile's record is sealed, the adjudication is vacated and proceedings are dismissed. The effect of sealing a juvenile record in Texas is that the arrest [taking into custody], adjudication and proceedings are deemed not to have occurred.¹⁰

There is no provision under the TFC that permits the military access to sealed records, nor is there a provision that requires or forces a person to disclose or unseal their records and turn them over to the recruiter. If military personnel request records from DPS that have been sealed, they will receive notice that no records exist. If there is an inquiry by the military to any entity who received a sealing order, the entity must respond that records do not exist.¹¹ While juvenile court may allow, by order, inspection and release of sealed records to certain entities, the military is not listed as one of the entities.¹² Given this, how is the military able to access sealed records? A person who is the subject of the sealed records may petition the court for inspection of his/her own sealed records, and

upon a motion to the court, the court may order the release of any or all records to petitioner.¹³ The petitioner can then share the information with the military or with anyone else. Although there is nothing under the TFC that enables the military to force the person to unseal their records and turn these records over to the recruiter, if the applicant discloses past criminal activity or the recruiter suspects that the applicant is concealing criminal activity, the enlistment process comes to a halt and the applicant will need to produce the records in order for the enlistment process to proceed.¹⁴

The Sealing Process in a Nutshell

After certain requirements are met, records can be sealed without or with application.¹⁵ Records are considered sealed if they are not destroyed but stored in a manner that allows limited access to them. DPS stores the records in a way where the Texas Juvenile Justice Division (TJJD) can access them for statistical and recidivism studies.¹⁶

In Texas, information regarding a juvenile's delinquent conduct is entered into the Juvenile Justice Information System (JJIS), a computerized database maintained by the Department of Public Safety (DPS).¹⁷ The information in the JJIS is confidential but may be accessed by certain entities identified by statute.¹⁸ The JJIS maintains information relating to delinquent conduct that, if committed by an adult, would constitute a criminal offense other than a fine only offense.¹⁹ These records include, but are not limited to information relating to the juvenile, biographical data, marks, tattoos, fingerprints, referral history (including level and degree of the alleged offense), adjudication and disposition of the case including the name and description of programs that the juvenile was referred to, probation or commitment of the juvenile, termination of supervision or discharge from commitment and a description of each appellate proceeding.²⁰

The JJIS is the point of entry into the FBI Interstate Identification Index (III), a database that stores criminal history information.²¹ The information in the JJIS is subject to sealing. Within 61 days of receiving a sealing order, DPS will limit

access to the records, destroy other records in its possession such as DNA records, and send written verification of the sealing to the issuing court.²² DPS de-identifies the data and moves it to a separate database just for TJJD's research purposes. DPS will send an electronic message to the FBI to have the juvenile's information removed from their criminal history database. DPS will follow up by sending the FBI a copy of the sealing order and perform periodic audits to double check that everything was removed.²³ Once the juvenile's information is removed from the FBI database, any requests for records by the military to the FBI will produce no results.

A person whose records have been sealed, [regardless of whether he/she is trying to join the military], is not required under the Texas Family Code to state that that/he/she been the subject of a juvenile matter:

- in any proceeding
- on any application for employment
- on any licensing, admission or housing application
- or any other public or private benefit application

Information in the sealed records, the fact that the records once existed, denial of their existence or involvement in a juvenile matter may not be used against the person in any manner. A person who is the subject of the sealed records may not waive the protected status.²⁴

Note: Sealing statutes vary among states. Some states may allow inspection of juvenile records (sealed and unsealed) by military personnel or require disclosure of sealed information to the military.²⁵ If the client has a criminal record in another state, it is important to know that state's law with regard to the military's access to those records.

Military Law

While there is no Texas law that obligates a juvenile to disclose sealed or unsealed records to the military, he/she is obligated under military law to answer questions truthfully and be fully transparent during the enlistment process. If the person makes false representations or deliberately conceals information on the enlistment application, that if known at the time might have resulted in rejection, and the person is inducted into the military, there can be consequences. The servicemember is subject to military law and can be prosecuted under Article 83 of the Uniform Code of Military Justice (UCMJ) for fraudulent enlistment. The UCMJ is federal law that governs the military justice system.²⁶ It defines the military justice system and lists criminal offenses under military law.

Article 83 of the UCMJ states, inter alia, that

"Any person who...

procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder.....shall be punished as a court-martial may direct."

The elements for fraudulent enlistment include:

- (a) That the person was inducted into the armed forces;
- (b) That the person knowingly misrepresented or deliberately concealed a certain material fact or facts regarding qualifications;
- (c) That the person's enlistment was procured by knowingly false representation or deliberate concealment; and

(d) That during the enlistment the person received pay or allowances or both.

An applicant commits the offense of fraudulent enlistment when he/she knowingly gives false information or deliberately conceals information, and the information would constitute either an absolute bar to enlistment or would constitute a bar to enlistment without a waiver, and received pay or allowances or both.²⁷

By having deliberately concealed disqualifying information such as a criminal offense or medical and mental health issue, the servicemember risks being discharged from the military.²⁸ Consequences depend on the circumstances and seriousness of the offense or issue, and on the individual's quality of service up to that point. Every situation is different and will be treated accordingly.²⁹

Punishment for fraudulent enlistment or appointment can result in an administrative separation from the military, a simple reduction in rank or more serious consequences including a dishonorable discharge, forfeiture of pay and allowances and/or confinement for 2 years.

A service member's false representations tend to be discovered after he/she gets in trouble for an unrelated matter. There is a 5 year statute of limitations for a charge of fraudulent enlistment in violation of Article 83 of the Uniform Code; therefore, a service member who enlisted at least 5 years prior does not have to worry about an Article 83 conviction. This does not mean that enlistment lies cannot have repercussions past the 5 mark. False representations and concealment of information could raise character concerns that result in denial or revocation of a security clearance under the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information.

The National Security Adjudicative Guidelines state, inter alia, that

“Eligibility [for access to classified information or initial or continued eligibility to hold a sensitive position]...

shall be determined by appropriately trained adjudicative personnel through the evaluation of all information bearing on an individual's loyalty and allegiance to the United States, including any information relevant to strength of character, honesty, discretion, sound judgment, reliability, ability to protect classified or sensitive information, and trustworthiness.”³⁰

Waivers

A juvenile's criminal record will not necessarily disqualify him/ her from enlisting. The military can choose to waive certain offenses. A criminal history (moral) waiver involves an application process where the person is essentially asking the military to make an exception in his/her particular case and excuse a disqualifying offense or issue.³¹ It can be a relatively quick process or it can be lengthy and take weeks/months depending on the circumstances of the offense or issue. It involves a thorough investigation of the incident and each waiver is reviewed on its own merit. If the recruiter believes the applicant is a good candidate, the recruiter can initiate the waiver process. Recruiters, however, do not have waiver approval/disapproval authority. Waivers are reviewed by officials higher up in the chain of command, exactly how high up depends on the offense and circumstances. Decisions regarding waivers are made based upon current law, regulations and policy.³² Officials generally consider the 'whole person' concept when making a decision. They consider the "who, what, when, where and why" of the offense in question, and the applicant has the burden to demonstrate that the waiver will benefit the military.³³ Factors considered when reviewing a waiver application include the following:

- age and maturity at the time of offense,
- when the conduct occurred,
- whether or not the incident involved violence,
- the circumstances surrounding the conduct,
- voluntariness of participation,
- the presence or absence of rehabilitation,

- whether or not the records were sealed,
- the motivation for the conduct, and
- the likelihood of continuation of the conduct

Adverse Adjudication

In determining whether a waiver is required, recruiters focus on the type of offense, the circumstances surrounding the offense, and whether there was any kind of “adverse adjudication” associated with the incident. Any action taken on a case where there is a conviction, finding, decision, sentence, judgement or disposition other than unconditionally dropped, unconditionally dismissed or acquitted is considered an adverse adjudication. Court imposed orders to pay restitution, perform community service, attend classes are examples of adverse adjudication. Participation in a pretrial diversion program is processed as an adverse adjudication by the military and is essentially considered a plea of guilty.³⁴ Military personnel are primarily interested in whether or not the person actually committed the offense and not on how the case was negotiated or disposed. For example, negotiations resulting in a plea of true to a misdemeanor that was initially filed as a felony, is considered to be a plea of true to the original felony. Even if a charge is dismissed without any court action, it must be reported during the enlistment process. A suitability review team determines whether a waiver will be required.

Some offenses can be waived, some are virtually always an automatic disqualifier, and some are very problematic.

Examples of offenses which can be waived:

- Traffic Offenses, e.g., driving while license suspended, speeding, driving uninsured vehicle and parking violations,
- Misdemeanor Offenses, e.g., assault, criminal trespass and criminal mischief; driving while intoxicated (DWI) and driving under influence (DUI) are considered serious offenses,
- Combinations, e.g., traffic offense and a misdemeanor offense,

- Felonies in general remain difficult to “overcome” but they can qualify for a waiver depending on the facts and circumstances

There is no guarantee that certain offenses will qualify for a waiver; it depends on the nature of the offense and what attributes the candidate brings to the table. If the recruiter believes the applicant is someone worth considering they may be willing to pursue a waiver on their behalf.

What follows are examples of offenses that are considered automatic disqualifiers:

- Intoxication or under the influence of alcohol or drugs at time of application is an automatic disqualifier.
- Adult felony convictions are currently automatic disqualifiers.
- Juvenile felonies involving violence. Chapter V, Section 571.3(c)(2)(ii) of the Code of Federal Regulations defines juvenile offense as one committed by the applicant under the age of 18.
- Offenses involving the sale or transfer of illegal drugs are automatic disqualifiers.
- Drug related offenses involving controlled substances such as opiates and hallucinogens are very problematic.
- A sexually related offense, with rare exceptions, will disqualify a person from every branch of the military.³⁵

Note: An offense that is considered serious and an automatic disqualifier one year might qualify for a waiver the next year. Currently, the army will consider waivers for one juvenile felony (depends on severity). The following are examples of offenses that are problematic but may qualify for waivers:

- An adjudication for possession of marijuana (depending on the amount) may qualify for a waiver.
- Domestic violence cases raise red flags, but officials will now consider the circumstances. A “conviction” for domestic violence that falls under the Lautenberg Amendment is problematic and can be an automatic

disqualifier. Lautenberg prohibits a soldier from owning, possessing or being issued firearms and ammunition.³⁶

- Multiple traffic violations are problematic because they reflect a pattern of behavior but may qualify for a waiver.

A recent article published by Washington AP News suggests that the army is now granting waivers for past marijuana use in an effort to meet the military's aggressive 2018 recruitment goals.³⁷ According to one recruiter I spoke to, past marijuana use has never been an automatic disqualifier. It has always qualified for a waiver depending on the frequency of use and the likelihood of the candidate to stop using it and test clean. However, continued use of marijuana while in the military is prohibited and a history of treatment for drug addiction remains an automatic disqualifier.³⁸

Each branch has its own standards when determining whether or not a criminal offense is disqualifying and requires a waiver. The waiver process is very subjective. Applicants with a criminal record are referred to as Category Four by the Army. Category Four is a low priority candidate, so any additional attributes or qualities the applicant can offer the recruiter will increase the chances of the recruiter pursuing a waiver. Whether a recruiter is willing to pursue a waiver can also depend on the recruiting center and what their recruitment objectives are. The applicant will have a better chance at a center that has a greater number of available Category Four slots as opposed to a center that is focused on recruiting more highly qualified candidates, i.e., ones without a criminal record and who score well on the military entrance exam, the ASVAB.

Each and every waiver request is evaluated individually. No two cases are alike. Keep in mind, the military is looking for the most qualified candidates and will likely be more hesitant to pursue a waiver for a recruit they consider a borderline candidate. Pursuing a waiver can be very time consuming. The applicant does not have a *right* to have a waiver processed, and if the recruiter doesn't think

there is a good chance of getting a waiver approved, the recruiter is unlikely to submit one.

The number of waivers issued in a year varies and can depend on the recruiting center, time of year and how fast the Army is trying to grow. If a waiver is disapproved, there is no appeals process, but, a waiver decision is only valid for the branch that made it. The applicant still has the option of applying to a different branch of the military.³⁹

Military Enlistment Standards

Requirements and policies for enlisting can vary from year to year. As one recruiter put it, “recruitment is like a rollercoaster” and is tied to the military’s need to either grow or downsize the ranks. In times of war, the military may lower its standards to meet military quotas.

Under the current White House administration, the Army is targeted to add 80,000 soldiers in fiscal year 2018. According to Adam Linehan, writer for the military website, *Task and Purpose*, and author of a recent article on recruiting, (November 2017), *The Recruiters: Searching For The Next Generation Of Warfighters In A Divided America*, “we are in the midst of a massive undertaking by recruiters to expand their forces.” However, don’t be misguided by recent articles suggesting that standards for enlistment have been lowered. The Army is actually raising its standards and focusing on the quality of its recruits instead of the number of recruits. The Army is seeking more highly qualified individuals referred to as Class A, or Alpha, applicants who score 50 or better on the Armed Services Vocational Aptitude Battery (ASVAB) and have a high school diploma and some college (i.e., associate’s degree). Bravos are individuals who score between 31 and 50 on the exam. The Army’s recruiting objective consists of a “volume mission” and a “quality mission.” The quality benchmarks mandated by the Pentagon requires that at least 90% of enlistees have a high school diploma, at least 60% must score at least 50 on the ASVAB and Category Four is limited to no more than 4% of enlistees.⁴⁰ The ASVAB is a

timed multi-aptitude test that measures developed abilities and is a predictor of future academic and occupational success in the military. The test is designed to determine if the applicant has the mental ability to serve in the military.⁴¹ If the mission to recruit 80,000 soldiers in 2018 fails, it is likely because the Army is currently prioritizing quality over quantity.⁴²

In November 2017, *USA Today* published a story suggesting that the Army is lowering its standards to meet recruiting goals for 2018 by giving waivers for a variety of mental health issues including drug and alcohol abuse, self-mutilation, bipolar disorder and depression.⁴³ According to Linehan, however, using waivers and bureaucratic loopholes to recruit unqualified individuals to meet quotas is actually becoming less common. While the Army is even more willing to waive certain issues such as past marijuana use and some **limited** mental health issues, other things that may have been overlooked several years ago (e.g., serious offenses involving violence) are now considered deal-breakers. Between 2003 and 2006, the Army loosened age and weight requirements and allowed more high school dropouts and applicants with low ASVAB scores to enter the ranks. Waivers for serious offenses such as aggravated assault and robbery also increased during that time period.⁴⁴ Today, those sub-standard requirements would likely disqualify a candidate.

Knowing current military standards is helpful when considering whether to disclose or not disclose sealed information. On the one hand, having sealed the record reflects well on the applicant because it shows maturity, rehabilitation, and a desire to become a law abiding citizen. On the other hand, the offense that was sealed, if disclosed, may permanently disqualify the person from enlisting.

The Enlistment Process

The applicant should have a good understanding of recruitment procedures and policies when enlisting. The first thing the recruiter will do is pre-qualify the applicant. Some basic military qualifications the recruiter will review with the applicant include:

- must be a U.S. citizen or legal foreign national,
- must be in good health (branches have varying height and weight standards),
- must not have a medically disqualifying condition,
- must be 17 years of age (with parental consent) or 18 (branches have different minimum and maximum age requirements),
- must have a high school diploma or equivalent,
- must pass the ASVAB,
- no felony convictions,
- no offensive or disqualifying tattoo,
- no ear gauges,
- no persistent use of illegal drugs,
- no ADHD medication within past 12 months,
- no insulin-dependent diabetes

The Pentagon estimates that 71 percent of America's 17-24 year old population would fail to qualify for enlistment. Obesity remains the single biggest reason for failing to meet basic requirements. According to Maj, Gen. Allen Batschelet, commander of the U.S. Army Recruiting Command, "obesity is becoming a national security issue."⁴⁵

The recruiter will request certain documents such as a birth certificate, social security card and a high school diploma or GED certificate. The applicant may take a sample ASVAB. The sample mini test is a good indicator of how the applicant will score on the actual test taken later in the process. The applicant will also be asked to sign a release for a FBI background check. Recruiters routinely run fingerprints through the FBI database and check sex offender registries. If the applicant has a juvenile record that has **not** been sealed, the FBI check will produce a rap sheet listing his/her criminal history.

In addition to the requirements and procedures listed above, the applicant will be given a packet which includes a lengthy and detailed enlistment security questionnaire regarding family, associates, schooling, employment, finances,

mental health, medical and criminal history. The applicant will be asked to list all offenses for which he/she was arrested, charged, summoned, cited or ticketed. If criminal history is disclosed or if the recruiter suspects that the person is being deceptive, the recruiter will request a release of records. Any disqualifying information that is disclosed or revealed must be fully investigated.⁴⁶ Some examples of questions/information requested on the enlistment security questionnaire include the following:

- Question - Yes or No. *“Have you ever been told by anyone (judge, lawyer, any army personnel, family friends etc.) that you do not have to list a charge because the charge(s) were dropped, dismissed, not filed, expunged, stricken from the record or were juvenile related?”*

The applicant is usually unprepared for this question. One recruiter indicated that this is the point when an applicant’s eyes glaze over. The recruiter detects hesitation and deception which suggests the applicant has not fully disclosed. The applicant may have sealed his/her records and did not feel the need to disclose the information. According to another recruiter, “once the circle of trust is broken it’s hard to regain.”

Some additional questions requesting mental health information include:

- Question - Yes or No. *“Seen a psychiatrist, psychologist, social worker, counselor or other professional for any reason (inpatient or outpatient) including counseling or treatment for school, adjustment, family, marriage or any other problem, to include depression, or treatment for alcohol, drug or substance abuse”*
- Question - Yes or No. *“Evaluation, treatment, or hospitalization for substance use, abuse, addiction or dependence (including illegal drugs, prescription medications, or other substances”*
- Question - Yes or No. *“Taken medication, drugs, or any substance to improve attention, behavior, or physical performance”*

Note: Mental health issues and treatment will not be investigated unless disclosed. According to one recruiter, mental health treatment “cannot be overcome,” and is usually a disqualifier, however the U.S. Army personnel chief, recently acknowledged that the Army has made “a simple administrative change” to the waiver process allowing waiver requests to be reviewed and approved by lower levels of command. This is an attempt by the military to not close the door on individuals (with limited mental health issues) who are otherwise medically, mentally and physically qualified for military service.⁴⁷

There are also certain medical conditions that can prevent a person from joining the military. Medical conditions will not be investigated unless disclosed due to privacy rules--Health Insurance Portability and Accountability Act (HIPAA). However, if the person ends up ill or injured after enlistment, the Army will investigate and search medical records for a pre-existing condition.

Note: Information not disclosed when initially enlisting may be discovered at a later time if the person pursues a position requiring a security clearance. A security clearance involves a more thorough investigation of one’s background including credit checks, field interviews with family, friends, associates, employers, co-workers, current spouse, fiancé, or cohabitant of a romantic nature, former spouse(s) and in-laws.⁴⁸

If the applicant discloses a criminal record, or if it is discovered during the FBI background check, the application process will be put on hold. According to one recruiter, “closing the loop” (a complete investigation) on disclosed disqualifying information is required. Past delinquent conduct renders a person unqualified to serve, and unless it is an automatic disqualifier, (e.g. sexual assault), the applicant can pursue a waiver.

Recruiters are not out on a witch hunt. Their mission is to recruit and they want people to enlist, and unless criminal history is disclosed either by self admission or the FBI background check, or some deception is detected, the enlistment process advances to the next phase.

MEPS

If disqualifying information is not disclosed or discovered, the process continues with a visit to the Military Entrance Processing Station (MEPS). MEPS is staffed with personnel from all military services who screen and process applicants via a battery of physical and psychological testing. There, the applicant will be given another opportunity to disclose disqualifying information. The applicant is warned that giving false information can result in prosecution and confinement and/or a fine. If the applicant discloses disqualifying information during the MEPS process, he/she is routed back to the recruiter for a full investigation.⁴⁹

Once the applicant makes it through the MEPS process, the final two steps are signing an enlistment contract and taking the oath of enlistment. When signing the enlistment contract, the servicemember is put on notice once again that there are legal consequences for providing false information. The enlistment contract (DD Form 4/1) includes the following section:

“13a. My acceptance for enlistment is based on the information I have given in my application for enlistment. If any of that information is false or incorrect, this enlistment may be voided or terminated administratively by the Government, or I may be tried by Federal, civilian, or military court, and, if found guilty, may be punished.”

Preserving The Military Option

If you have a client that is interested in joining the military, start by dispelling the myth that juvenile records don't count. They do count and the client needs to be encouraged to start making better choices. If the client is serious about pursuing a military career, here are some actions he/she should take to increase his/her chances of getting in:

- Get a high school diploma and preferably some college credit.

- Prepare for the ASVAB. Take a few practice tests. A good score can significantly increase chances of getting a waiver. There are many online study guides and practice tests to help improve scores www.March2success.com.
- Get fit. There are minimum fitness standards. Military readiness can increase chances of pursuing a waiver.
- Avoid tattoos (at least for now). Tattoos are Ok in the military but there are rules. No tattoos on the hands, neck, face, head and no offensive tattoos.⁵⁰ Rules differ depending on the branch.
- Test the waters. Visit more than one recruitment center before actually applying (do not enter personal information into the system until ready to apply). Each recruitment center has a mission with regards to the numbers of Alphas and lesser qualified candidates it is willing to allow into its ranks. Given that the waiver process is very subjective, a recruitment center in one part of the city may have different recruitment goals than a center in another part of the city which could make a big difference on how willing they are to work with a candidate who has a criminal record.
- Weigh the pros and cons of disclosing sealed information while being mindful of the consequences. The juvenile should make a decision as to disclosure before beginning the enlistment process.

Conclusion

A military career can make a positive difference in the lives of many of our clients. Benefits include a steady income, health insurance, retirement, education, career opportunities, pride in serving one's country and being part of something bigger than themselves.

It is inevitable that the military option will come up when working with juveniles and having a general understanding of recruitment policies and procedures will help provide meaningful guidance. Since becoming an all volunteer force in 1973, recruitment standards have fluctuated and although there are times when the

military is more lenient with regards to its requirements, a criminal record remains a significant barrier to getting in the military. Advising our clients to seal their records is important but not sufficient. The client should be aware of the military's ability to access juvenile records, and the client's obligation under both Texas law and military law to disclose that information. Knowledge of the enlistment process will also help the client be better prepared. I would strongly urge the client to test the waters. The best advice we can provide our clients who are interested in joining the military is to have them carefully weigh the pros and cons of disclosing and not disclosing sealed information and be very mindful of the consequences under military law if they choose not to disclose. Encourage them to prepare for the initial interview, study for the ASVAB, and decide in advance before entering the recruiter's office, how they are going to answer some very tough questions.

NOTES

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6. Texas Family Code §58.007(b).
7. Texas Family Code §§58.007 and 58.007(i).
8. Texas Family Code §58.106(a).
9. Texas Family Code §58.008(d)
10. Texas Family Code §58.258(c).
11. Texas Family Code §58.259(c).

12. Texas Family Code §58.260.
13. *Id.*
14. Army recruiter, personal communication, December 12, 2017.
15. Texas Family Code §§ 58.255 and 58.256.
16. Texas Family Code §58.259.
17. Texas Family Code §§58.105 and 58.108.
18. Texas Family Code §58.106(a).
19. Texas Family Code §58.104(a).
20. Texas Family Code §§58.104(a) and 58.104(b).
21. Texas Family Code §58.102(a).
22. Texas Family Code TFC §58.259(a)(1).
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