

**MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE TEXAS JUVENILE JUSTICE DEPARTMENT AND
THE TEXAS DEPARTMENT OF PUBLIC SAFETY**

WHEREAS, Donna Vandiver, Associate Professor, School of Criminal Justice at Texas State University (the "researcher") has requested certain juvenile probation data maintained by the Texas Juvenile Justice Department ("TJJD") and certain criminal history information maintained by the Texas Department of Public Safety ("TXDPS") in connection with a study entitled "Juvenile Registration and Notification Policy Effects: A Multistate Evaluation Project" (the "study");

WHEREAS, TXDPS has agreed to combine juvenile probation data provided by TJJD with information maintained by TXDPS and provide this combined information to the researcher;

WHEREAS, TXDPS has agreed to safeguard the juvenile probation data provided by TJJD under this MOU and remove individual identifying information from the combined information before providing it to the researcher;

NOW, THEREFORE, in consideration of TJJD providing such information to TXDPS, the parties agree as follows:

I. DEFINITIONS

- a. "Juvenile probation data" is defined as any information about an individual person, any information about a single or multiple transactions between the juvenile justice system and an individual person, including referral, disposition, detention, program and placement information
- b. "Individual identifying information" is defined as any piece of information that can be linked uniquely to a person and includes a person's name, date of birth, photograph, social security number, driver license number, TJJD personal identification number, TXDPS identification number, state identification number, and any other personal or case identifier number that can be linked uniquely to the person.
- c. "Matched information" is defined as composite records created by linking individual juvenile probation data from TJJD files with information maintained by TXDPS.
- d. "Researcher" has the meaning assigned to it in the preamble to this MOU.
- e. "Study" has the meaning assigned to it in the preamble to this MOU.

II.TJJD

- f. TJJD shall provide individual level juvenile probation data to TXDPS regarding juveniles referred to and disposed by juvenile probation departments from September 1, 2005 to August 31, 2016.
- g. TJJD shall send the individual juvenile probation data to TXDPS through a secure electronic connection or establish another secure method.

III.TXDPS

- a. TXDPS shall match individual juvenile probation data provided by TJJD to criminal history and sex offender registration information maintained by TXDPS.
- b. After matching the information provided by TJJD to the information maintained by TXDPS, but before providing the matched information to the researcher, TXDPS shall:
 - i. completely remove all individual identifying information, except dates of birth and TJJD personal identification number, from the matched information, and
 - ii. redact all dates of birth contained in the matched information so that only the month and year of each date of birth appears in the matched information.
- c. To keep confidential the identity of any person whose individual juvenile probation data is provided by TJJD, TXDPS shall:
 - iii. use the information provided by TJJD under this MOU only for purposes of the study,
 - iv. restrict access to all individual identifying information supplied by TJJD to those employees of TXDPS whose responsibilities cannot be accomplished without such access,
 - v. store all physical media containing juvenile probation data received from TJJD in secure, locked containers,
 - vi. retain juvenile probation data received from TJJD only so long as is necessary to effectuate the purposes of the study and to archive it in such a manner as to prevent unauthorized use, and
 - vii. permit TJJD to monitor, audit and review the activities and policies of TXDPS in implementing this MOU to assure compliance therewith.
- d. In the event TXDPS fails to comply with the terms of this MOU, TJJD may cease to supply individual juvenile probation data to TXDPS and may demand the return of all individual juvenile probation data previously provided.
- e. In the event TXDPS discovers any prohibited or unauthorized use of the matched information by the researcher or any other person, TXDPS shall cease providing such information and shall demand the return of all such information previously provided.
- f. In the event TXDPS discovers individual identifying information has been intentionally or unintentionally provided to the researcher or any other person,

TXDPS shall cease providing such information and shall demand the return of all such information previously provided.

IV.UNAUTHORIZED USE

- g. Use of individual juvenile probation data provided by TJJD pursuant to this MOU for purposes other than the study is prohibited and unauthorized.

V.GENERAL PROVISIONS

Article 1: Relationship of Parties

TXDPS is acting as an independent contractor and is wholly responsible for the day-to-day operations of its programs and employees; no joint venture, partnership, or agency exists nor shall be implied by the terms of this MOU. No employee of TXDPS shall become an employee of TJJD by virtue of this MOU.

Article 2: Indemnity

TXDPS shall be liable for, and hereby does indemnify and hold harmless TJJD and its officers, directors, agents, employees and representatives from and against any and all liability for any and all claims, suits, demands, causes of action, and/or damages, (including costs of court and reasonable attorneys' fees) arising from or based upon misconduct, intentional acts or omissions, and negligent acts or omissions on the part of TXDPS, its officers, directors, agents, representatives, employees, or visitors which may arise out of or could result from this MOU.

Article 3: Confidentiality and Security

Section 1: TXDPS shall ensure that all its employees will comply with state and federal law and with TJJD policies regarding the confidentiality of juvenile records and identifying information.

Section 2: TXDPS shall ensure that all information regarding TJJD and/or its youth that is gathered, produced, or otherwise derived from this MOU shall remain confidential subject to release only by permission of TJJD.

Section 3: Identifying pictures, appearances, films, or reports of TJJD youth may not be disclosed by TXDPS without the written consent of the youth and, if under age 18, of his or her parents, guardian, or managing conservator.

Article 4: Administrative Error Sanctions

Section 1: TJJD, based on information from monitoring or other verifiable sources, may terminate this MOU for the reasons set forth in the article dealing with termination below, or take other actions including, but not limited to:

- a. Require TXDPS to take specific corrective actions in order to remain in compliance with the terms of this MOU; and/or
- b. Impose recommendations from audit or investigative findings, and minor or major sanctions; and/or

Section 2: TXDPS shall cooperate fully with TJJD and its authorized representative in carrying out corrective action plans.

Article 5: Termination

Section 1: TXDPS may terminate, for convenience, its obligations under this MOU by giving thirty (30) calendar days notice.

Section 2: TJJD may terminate, for convenience, its obligations under this MOU by giving thirty (30) calendar days notice, or immediately in the event of breach of contract by TXDPS.

Section 3: Cause/Default: If TXDPS fails to provide the services contracted for according to the provisions of the MOU or fails to comply with any terms or conditions of the MOU, TJJD may, upon written notice of default to TXDPS, immediately terminate all or any part of the MOU. Termination is not an exclusive remedy but will be in addition to any other rights and remedies as provided in equity, by law or, under the MOU. TJJD may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the MOU. The exercise of any of the foregoing remedies will not constitute a termination of the MOU unless TJJD notifies TXDPS in writing prior to the exercise of such remedy. TXDPS shall be liable for all costs and expenses, including court costs, incurred by TJJD with respect to the enforcement of any of the remedies listed herein.

Article 6: Funding Out Clause

This MOU is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of this Termination Article shall apply. This MOU is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature.

Article 7: Waiver

No waiver by either party of any breach or default of the other under this MOU shall operate as a waiver of any future or other breach or default, whether of a like or different character or nature.

Article 8: Severability

If any part of this MOU is contrary to any federal, state, or local law, it is not applicable and such invalidity will not affect the other provisions or applications of this MOU which can be given effect without the invalid provision or application and to that end the provisions of this MOU are declared to be severable.

Article 9: Contract Term

The entire term of this MOU runs from the date of final signature through August 31, 2016.

Article 10: Contract Amendment

No other agreements, oral or written, shall constitute a part of this MOU unless such is made in writing, executed by the parties hereto or their successors, and expressly made a part of this

MOU. TJJD reserves the right to make unilateral minor administrative changes to correct typographical errors.

Article 11: Notice of Changes

Section 1: TXDPS shall notify TJJD immediately in writing in advance of any significant change affecting TXDPS, including but not limited to change of TXDPS's name or identity, location of services, ownership or control, operating entity, governing board membership, key personnel, payee identification number, and other significant changes that may affect the delivery of services under the terms of this MOU.

Section 2: TXDPS shall refrain from transferring or assigning this MOU or from entering into any subcontract for the services under this MOU without prior written approval from TJJD.

Section 3: TXDPS will not relocate the services provided under this MOU from 5805 N. Lamar Blvd, Austin, TX 78752 without prior written approval from TJJD.

Article 12: Notice

Required notices shall be provided to the Director of Business Operations and Contracts at the TJJD Central Office at **11209 Metric Blvd. Bldg. H, Austin, TX 78758; to any TJJD facility where you provide services, and to TXDPS at 5805 N. Lamar Blvd, Austin, TX 78752.**

Article 13: Venue

In any legal action arising under this MOU, the laws of the State of Texas shall apply and venue will be in Travis County, Texas.

Article 14: Problem Solving in the Ordinary Course of Business

Section 1: The parties to this MOU shall use the procedures contained in this article for routine problem solving including claims for breach of contract. Should these procedures not resolve claims for breach of contract, the procedures contained in Article 15 shall be followed thereafter.

Section 2: Informal Resolution: TXDPS and TJJD staff shall communicate regularly and engage in informal problem solving efforts as a routine measure, thus preventing differences from becoming major problems. When routine measures have been exhausted, TJJD staff are encouraged to utilize the following mechanism to resolve problems.

Section 3: Formal Resolution:

- a. TXDPS or TJJD staff who wish to submit problems for resolution may do so in writing, including all relevant information and a recommended resolution.
- b. The statement of problem shall be submitted to the designated contact unless the problem specifically involves the designated contact, in which case, it shall be submitted to the designated contact's supervisor.
- c. Problems are resolved within ten (10) business days; written responses shall be sent to the individual or program that submitted it, designated contact and designated contact's supervisor.

Section 4: Appeal: TXDPS desiring to appeal the decision may do so within ten (10) business days by writing all pertinent information relevant to the appeal to the designated contact's supervisor if the problem was resolved by the designated contact; or

Director of Business Operations and Contracts if the problem was resolved by the designated contact's supervisor. When appealed, the problem shall be resolved within fourteen (14) business days; responses shall be sent to the individual or program who submitted it; designated contact; designated contact's supervisor; and Director of Business Operations and Contracts.

Article 15: Claims for Breach of Contract

Section 1: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used, as further described herein, by the TJJD and TXDPS to attempt to resolve any claim for breach of contract made by TXDPS.

- a. TXDPS's claim for breach of this MOU that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code. To initiate the process, TXDPS shall submit written notice, as required by Subchapter B, to the Executive Director. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the TJJD and TXDPS otherwise entitled to notice under the parties' MOU. Compliance by TXDPS with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.
- b. The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is TXDPS's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the TJJD if the parties are unable to resolve their disputes under subparagraph A. of this paragraph.
- c. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this MOU by the TJJD nor any other conduct of any representative of the TJJD relating to the MOU shall be considered a waiver of sovereign immunity to suit.

Section 2: The submission, processing and resolution of TXDPS's claim is governed by the published rules adopted by the TJJD pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

Section 3: Neither the occurrence of an event nor the pendency of a claim constitute grounds for the suspension of performance by TXDPS, in whole or in part.

Article 16: No Third Party Beneficiaries

The terms of the MOU are for the sole benefit of the parties to the MOU and will not be construed to confer any rights on any other person.

Article 17: Specifications

The services performed shall be in accordance with the specifications herein. TJJD shall determine the answers to all questions that may arise as to the interpretation of the specifications and the quality or acceptability of work performed. TJJD shall decide the rate of progress of the work and the acceptable fulfillment of the service on the part of TXDPS.

Article 18: Assignment

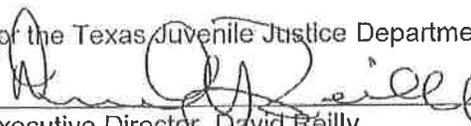
Without the prior written consent of TJJD, TXDPS may not assign this MOU, in whole or in part, and may not assign any right or duty required under it.

Article 19: Compliance with Other Laws

In the execution of this MOU, TXDPS shall comply with all applicable federal, state and local laws. TXDPS shall make itself familiar with and at all times shall observe and comply with all federal, state and local laws, ordinances and regulations which in any manner affect performance under this MOU.

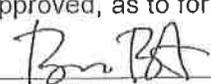
Article 20: Execution Authority

TXDPS represents and warrants that the individual signing this MOU is authorized to sign this document on behalf of TXDPS and to bind TXDPS under this MOU.

For the Texas Juvenile Justice Department:

Executive Director, David Reilly
6-11-15
Date

For the Texas Department of Public Safety

Skylor Hearn, Assistant Director
6-29-15
Date

Approved, as to form:

TJJD Staff Attorney, Benjamin Bellomy
6/11/2015
Date