

Sealing Juvenile Records PARTICIPANT HANDOUT



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Navigating Juvenile Justice

Sealing Juvenile Records Frequently Asked Questions 2016

During the 84th Legislative Session, House Bill 263 and Senate Bill 1707 (identical bills) contained important amendments to Section 58.003 of the Family Code (Sealing of Records). The new process, often described as “automatic sealing,” eliminates the requirement to file an application or petition to seal records and places the responsibility on the juvenile court to initiate proceedings. While the current age and offense eligibility criteria for sealing remain the same, the administrative obligations for verifying eligibility and processing sealing orders have changed.

The amendments to Section 58.003 became effective on September 1, 2015 and have generated in the past year a number of recurring questions to the Texas Juvenile Justice Department (TJJD) Legal Help Desk. Most questions centered on the initial steps toward implementing automatic sealing and related administrative practices. In particular, inquirers were seeking guidance on processing issues not addressed in the legislation. This handout contains a summary of some of the most frequently asked questions. The accompanying resource information has been prepared as an educational service. The implementation overview, emails, sample forms and other correspondence to juvenile probation chiefs and data coordinators are available on the TJJD website at www.tjjd.texas.gov/services/jcms.aspx.

What is sealing? Sealing refers to the formal process to protect, by court order, confidential juvenile records and information from disclosure to the public. The sealing process is available only if certain statutory age, offense, and case posture criteria have been met. The entire delinquency history is considered when determining whether a juvenile qualifies for sealing. Sealed records may be reopened only under specific circumstances.

Did the new law change the sealing criteria? The 2015 legislation did not change the statutory age and offense criteria outlined in Section 58.003 of the Family Code.

What is the role of the juvenile probation department? Juvenile probation departments maintain the physical files and records and case management information on referrals, supervision and court proceedings under Title 3 of the Family Code. While some of the obligations of the new law have shifted to the court, many juvenile probation departments facilitate certain aspects of the sealing process. Tasks may include: 1) retrieving CJIS notifications; 2) conducting local verification of case management systems; 3) providing the last known address of the juvenile who is the subject of the records; and 4) assisting with the identification of officials and agencies holding juvenile records.

What is the role of the Department of Public Safety (DPS)? The DPS computer system is programmed to search the last reported disposition event date, age, and juvenile offense history on or after 9/1/2015 and other criteria in Section 58.003 of the Family Code. Designated staff can retrieve the notices uploaded by DPS containing a list of juveniles who qualify for sealing under the new law. The DPS notices identify “candidates” for sealing but

are not conclusive. Counties are still required to conduct a local verification. The searches and notifications for restricted access and sealing are different processes.

What should police agencies do after receiving a sealing order?

Upon receipt of a sealing order, law enforcement and other listed entities are required to comply with Section 58.003(g), FC. The records must be sent to the clerk of court within 61 days after receiving a sealing order.

Are sealing notices based on each offense?

The notices issued by DPS apply to the person. For sealing purposes, eligibility is based on a child's entire record and the most serious offense controls.

Does DPS use the last official action or disposition date to determine eligibility?

DPS searches are based on the reported date of final discharge or last official action (i.e., the date of final discharge from probation, confinement, case closures and dismissals).

Did anything change regarding the special sealing provisions?

The eligibility criteria for special sealing affecting drug court, CINS prostitution, CINS sexting and human trafficking records did not change.

Will DPS issue a sealing notification for a youth who is a registered sex offender?

Section 58.003(n), FC prohibits sealing until the 10-year duty to register expires. DPS matches the Sex Offender Registry with information contained in the JJIS database. Assuming that there is no other disqualifying conduct, it is expected that an automatic sealing notice will be triggered when the person's duty expires and the name no longer appears on the registry.

What if local department records show there is disqualifying

history? Email Angie Kendall, Department of Public Safety Crime Records Division at Angie.Kendall@dps.texas.gov.

Does the FBI seal or restrict Texas juvenile records?

DPS reports that when a juvenile record is ordered sealed or restricted at the state level (i.e., JJIS), the corresponding federal level information maintained by the FBI/NCIC is flagged as sealed or restricted.

Can the juvenile court still seal records on its own motion?

Section 58.003(d), still gives the juvenile court discretion (on its own motion) to seal eligible records.

What if there is no cause number because the case was handled

informally? The Juvenile Justice Reporting Form [CR43-J] creates a statewide record after contact event information is sent to the Department of Public Safety for inclusion in the JJIS. Many cases handled non-judicially (i.e. informal cases) may not have a cause number, but should be sealed. A new cause number associated with the sealing order is recommended.

Is a court order required to seal records in the case management

system? Yes, a juvenile court order is required to seal any electronic or paper record, regardless of the medium.

What about ICT and sealing?

Which county should seal? When a case has been transferred for interim supervision, juvenile records are maintained in more than one county (SC/RC). The county that receives the DPS notification and processes the

sealing order should list the other ICT county as an entity to receive notice upon the entry of the sealing order.

What if a Petition to Reopen is filed after electronic/case management folders have been deleted and paper records sent to the clerk of court?

There only three circumstances in which Section 58.003 of the FC authorizes “unsealing” juvenile records. [See Subs. (h) – juvenile; (k) – enhancement; and (m) – open carry.] If the court grants a petition to reopen, only the clerk of the court is required to be responsive to the order.

Where can sample sealing orders be found?

The Juvenile Law Section of the State Bar of Texas has reviewed and updated sample sealing forms. The sample forms are available on the Juvenile Law Section website at www.juvenilelaw.org. These sample documents should be reviewed by your local counsel or juvenile prosecutor for legal sufficiency and local drafting preferences.

Are departments liable for an error that causes the court to seal or not seal a record?

Juvenile justice personnel will likely be protected under theories of qualified immunity for performing administrative and court-related duties in good faith and in accordance with the law and standard operating procedures.

Is there a Spanish version of the brochure on juvenile records?

TJJD has not developed a Spanish version of the juvenile.

Is there a training webinar available on the new automatic sealing provisions?

Yes, an archival webinar on automatic sealing is available and will be posted on the TJJD website soon.

Sealing of Records

Excerpt – Juvenile Records in Texas
2015 Update¹



If a juvenile record is sealed, the following happens:

1. The adjudication is vacated and the proceeding is dismissed and treated as if it had never occurred, except for the purposes of a subsequent capital prosecution;
2. All law enforcement, prosecuting attorney, clerk of court, juvenile court, and public or private agency or institution records ordered sealed must be sent to the court within 61 days;
3. All index references to the records must be deleted within 61 days and verification of the deletion sent to the court;
4. All the entities listed in #2 must reply “no record exists” in response to an inquiry in any matter;²
5. The juvenile is not required to state in any proceeding or application for employment, information, or licensing that he or she was ever a party to a proceeding in the juvenile system and such denial cannot be held against the person in a criminal or civil proceeding.³

NOT GUILTY FINDING

If the child is found not guilty on all counts, the court shall immediately order the records sealed.⁴

¹ Juvenile Records in Texas: 2015 Update, K. Singer.

² Texas Family Code §58.003(g)

³ Texas Family Code §58.003(j)

⁴ Texas Family Code §58.003(d)

RECORDS ELIGIBLE FOR SEALING PRIOR TO SEPTEMBER 1, 2015

MISDEMEANOR/CINS/NO ADJUDICATION - MANDATORY

If the records relate to a CINS or misdemeanor adjudication or to a person taken into custody and never adjudicated, the person must apply to have his or her records sealed. This application process is typically a motion for sealing filed by an attorney. The court must order sealing if:

1. Two years have passed since the final discharge or last official action in the case (if no adjudication); and
2. During that time, the person has not been convicted of a felony or misdemeanor involving moral turpitude or adjudicated for delinquent conduct or CINS and there are no pending proceedings seeking conviction or adjudication.⁵

MISDEMEANOR/CINS/NO ADJUDICATION - DISCRETIONARY

If the criteria for mandatory sealing are met, the court may in its discretion order the records sealed earlier than the two year period.⁶ A hearing is required prior to sealing unless the applicant waives the right to a hearing in writing and the prosecutor consents.⁷

FELONY ADJUDICATION - GENERALLY

Felony sealing is always discretionary. On application of the person, the court may order sealing only if:

⁵ Texas Family Code §58.003(a), as existed prior to September 1, 2015

⁶ Texas Family Code §58.003(d)

⁷ Texas Family Code §58.003(e), as existed prior to September 1, 2015

1. The person is 19 years of age or older;⁸
2. The person was not certified as an adult;
3. The records have not been used as evidence in the punishment phase of an adult criminal proceeding; and
4. The person has not been convicted of a felony after becoming age 17.⁹

A hearing is required unless the applicant waives the hearing in writing and the prosecutor consents.¹⁰

RECORDS ELIGIBLE FOR SEALING ON OR AFTER SEPTEMBER 1, 2015

In 2015, two bills were passed to make sealing “automatic” for records that become eligible for sealing on or after September 1, 2015. The eligibility for sealing was unchanged. However, there is no longer an application for sealing filed by the juvenile. The court, on its own, must determine when a record is eligible for sealing and provide notice to the prosecutor regarding the record *prior to* it becoming eligible for sealing.¹¹ A hearing is not held unless the prosecutor requests one.¹² Issues to be aware of when implementing this process:

1. The elimination of an application means courts must have a tickler system to alert them when records are potentially eligible for sealing. A DPS background check must be run on every record to determine eligibility.
2. If the only reason a record is ineligible for sealing is a pending charge, the records will have to be periodically run

- until the case is resolved to determine eligibility based on the outcome.
3. The elimination of an application means courts must determine on their own all entities that possess records and give them notice of a hearing (if any) and notice of the sealing.
4. If the prosecutor requests a hearing, notice must be provided to the juvenile. Because there was no application filed, the address the court has may be outdated.¹³
5. Although the section regarding early sealing for misdemeanors, CINS, and non-adjudications was not amended, the elimination of the application effectively eliminates the ability to have early sealing in those cases.

SPECIAL SEALING PROVISIONS

DRUG COURT

The court may order (with or without a hearing) sealing for a child adjudicated for CINS, felony, or misdemeanor if the child successfully completes a drug court program under Government Code Chapter 123.¹⁴ The prosecutor may maintain a separate record of child’s name, birth date, and date of program completion until child turns 17, at which time it must be added to the child’s other sealed records.¹⁵ The sealing may be ordered after final discharge or the last official action in the case (if no adjudication).¹⁶

⁸ Prior to 2011, it was 21 years of age.

⁹ Texas Family Code §58.003(c)

¹⁰ Texas Family Code §58.003(e), as existed prior to September 1, 2015

¹¹ Texas Family Code §58.003(a), effective September 1, 2015

¹² Texas Family Code §58.003(e), effective September 1, 2015

¹³ Although Texas Family Code §58.003(e) no longer requires the court to give the prosecutor notice of the hearing (presumably because the prosecutor requested it), courts should continue providing this notice if there is an expectation that the prosecutor know the date of and attend the hearing.

¹⁴ Or former law, Health and Safety Code Chapter 469

¹⁵ Texas Family Code §58.003(c-1) and (c-2)

¹⁶ Texas Family Code §58.003(d)

CINS PROSTITUTION

For a child taken into custody or adjudicated for engaging in conduct constituting prostitution as defined by §51.03(b)(6)¹⁷, the court (on its own motion and without a hearing) shall order sealing of records related to that conduct.¹⁸ The prosecutor may maintain a separate record of child's name, birth date, and date of program completion until child turns 17, at which time it must be added to the child's other sealed records. The sealing may be ordered after final discharge or the last official action in the case (if no adjudication).¹⁹

CINS ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR ("SEXTING")

The court may order sealing (with or without a hearing) for a child taken into custody or adjudicated for CINS conduct of "sexting"²⁰ under Family Code §51.03(b)(7)²¹ if the child successfully completes an educational program under Education Code 37.218. The prosecutor may maintain a separate record of child's name, birth date, and date of program completion until child turns 17, at which time it must be added to the child's other sealed records.²² The sealing may be ordered after final discharge or the last official action in the case (if no adjudication).²³

VICTIMS OR POSSIBLE VICTIMS OF HUMAN TRAFFICKING

The court may order sealing (with or without a hearing) for a child taken into custody or adjudicated for CINS conduct or delinquent conduct if the child successfully completes a

¹⁷ Renumbered from 51.07(b)(7), effective September 1, 2015

¹⁸ Texas Family Code §58.003 (c-3) and (c-4)

¹⁹ Texas Family Code §58.003(d)

²⁰ Penal Code §43.621

²¹ Renumbered from 51.07(b)(8), effective September 1, 2015

²² Texas Family Code §58.003(c-5) and (c-6)

²³ Texas Family Code §58.003(d)

trafficked persons program under Human Resources Code §152.0016. The prosecutor may maintain a separate record of the child's name, birth date, and date of program completion until the child turns 18, at which time it must be added to the child's other sealed records.²⁴

EXCEPTIONS

Records may not be sealed if:

1. The person was given a determinate sentence;²⁵ or
2. It is a record created or maintained pursuant to sex offender registration laws and the person still has an obligation to register.²⁶

REOPENING SEALED RECORDS

1. By court order, the subject of the records may be permitted to inspect sealed records.²⁷
2. Prosecuting attorney may petition to have records of a felony adjudication reopened for purposes of Penal Code §12.42(a)-(c) and (e), related to penalties for repeat and habitual felony offenders.²⁸
3. On the request of DPS, the court must reopen and allow DPS to inspect the files and records related to an applicant for a license to carry a concealed handgun.²⁹

²⁴ Texas Family Code §58.003(c-7) and (c-8); unlike the other statutes, there is no trigger of when to order this sealing

²⁵ Texas Family Code §58.003(b)

²⁶ Texas Family Code §58.003(n)

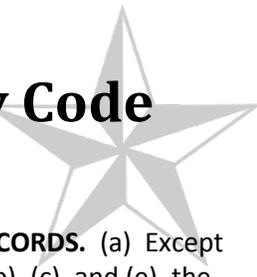
²⁷ Texas Family Code §58.003(h)

²⁸ Texas Family Code §58.003(k)

²⁹ Texas Family Code §58.003(m)

Texas Family Code

Section 58.003



Sec. 58.003. SEALING OF RECORDS. (a) Except as provided by Subsections (b), (c), and (e), the juvenile court shall order the sealing of the records in the case of a person who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision, or a person taken into custody to determine whether the person engaged in delinquent conduct or conduct indicating a need for supervision, if:

(1) two years have elapsed since final discharge of the person or since the last official action in the person's case if there was no adjudication; and

(2) since the time specified in Subdivision (1), the person has not been convicted of a felony or a misdemeanor involving moral turpitude or found to have engaged in delinquent conduct or conduct indicating a need for supervision and no proceeding is pending seeking conviction or adjudication.

(b) A court may not order the sealing of the records of a person who has received a determinate sentence for engaging in delinquent conduct that violated a penal law listed in Section 53.045 or engaging in habitual felony conduct as described by Section 51.031.

(c) Subject to Subsection (b), a court may order the sealing of records concerning a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony only if:

(1) the person is 19 years of age or older;

(2) the person was not transferred by a juvenile court under Section 54.02 to a criminal court for prosecution;

(3) the records have not been used as evidence in the punishment phase of a criminal proceeding under Section 3(a), Article 37.07, Code of Criminal Procedure; and

(4) the person has not been convicted of a penal law of the grade of felony after becoming age 17.

(c-1) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision that violated a penal law of the grade of misdemeanor or felony if the child successfully completed a drug court program under Chapter 123, Government Code, or former law. The court may:

(1) order the sealing of the records immediately and without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-2) If the court orders the sealing of a child's records under Subsection (c-1), a prosecuting attorney or juvenile probation department may maintain until the child's 17th birthday a separate record of the child's name and date of birth and the date the child successfully completed the drug court program. The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

(c-3) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court, on the court's own motion and without a hearing, shall order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6) or taken into custody to determine whether the child engaged in conduct indicating a need for supervision described by Section

51.03(b)(6). This subsection applies only to records related to conduct indicating a need for supervision described by Section 51.03(b)(6).

(c-4) A prosecuting attorney or juvenile probation department may maintain until a child's 17th birthday a separate record of the child's name and date of birth and the date on which the child's records are sealed, if the child's records are sealed under Subsection (c-3). The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

(c-5) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, or taken into custody to determine whether the child engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, if the child attends and successfully completes an educational program described by Section 37.218, Education Code, or another equivalent educational program. The court may:

(1) order the sealing of the records immediately and without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-6) A prosecuting attorney or juvenile probation department may maintain until a child's 17th birthday a separate record of the child's name and date of birth and the date on which the child successfully completed the educational program, if the child's records are sealed under Subsection (c-5). The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed

records.

(c-7) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child found to have engaged in delinquent conduct or conduct indicating a need for supervision or taken into custody to determine whether the child engaged in delinquent conduct or conduct indicating a need for supervision if the child successfully completed a trafficked persons program under Section 152.0017, Human Resources Code. The court may:

(1) order the sealing of the records immediately and without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-8) If the court orders the sealing of a child's records under Subsection (c-7), a prosecuting attorney or juvenile probation department may maintain until the child's 18th birthday a separate record of the child's name and date of birth and the date the child successfully completed the trafficked persons program. The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 18th birthday to be added to the child's other sealed records.

(d) The court may grant to a child the relief authorized in Subsection (a), (c-1), (c-3), or (c-5) at any time after final discharge of the child or after the last official action in the case if there was no adjudication, subject, if applicable, to Subsection (e). If the child is referred to the juvenile court for conduct constituting any offense and at the adjudication hearing the child is found to be not guilty of each offense alleged, the court shall immediately and without any additional hearing order the sealing of all files and records relating to the case.

(e) The court shall give the prosecuting attorney for the juvenile court reasonable

notice before a person's records become eligible for sealing under Subsection (a) or (c) and may hold a hearing before sealing the person's records if the prosecuting attorney requests a hearing. Reasonable notice of the hearing shall be given to:

- (1) the person who is the subject of the records at issue;
- (2) the authority granting the discharge if the final discharge was from an institution or from parole;
- (3) the public or private agency or institution having custody of the person's records; and
- (4) the law enforcement agency having custody of the person's files or records.

(f) A copy of the sealing order shall be sent to each agency or official named in the order.

(g) On entry of the order:

(1) all law enforcement, prosecuting attorney, clerk of court, and juvenile court records ordered sealed shall be sent before the 61st day after the date the order is received to the court issuing the order;

(2) all records of a public or private agency or institution ordered sealed shall be sent before the 61st day after the date the order is received to the court issuing the order;

(3) all index references to the records ordered sealed shall be deleted before the 61st day after the date the order is received, and verification of the deletion shall be sent before the 61st day after the date of the deletion to the court issuing the order;

(4) the juvenile court, clerk of court, prosecuting attorney, public or private agency or institution, and law enforcement

officers and agencies shall properly reply that no record exists with respect to the person on inquiry in any matter; and

(5) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes other than a subsequent capital prosecution, including the purpose of showing a prior finding of delinquent conduct, as if it had never occurred.

(g-1) Statistical data collected or maintained by the Texas Juvenile Justice Department, including statistical data submitted under Section 221.007, Human Resources Code, is not subject to a sealing order issued under this section.

(h) Inspection of the sealed records may be permitted by an order of the juvenile court on the petition of the person who is the subject of the records and only by those persons named in the order.

(i) On the final discharge of a child or on the last official action in the case if there is no adjudication, the child shall be given a written explanation of the child's rights under this section and a copy of the provisions of this section.

(j) A person whose records have been sealed under this section is not required in any proceeding or in any application for employment, information, or licensing to state that the person has been the subject of a proceeding under this title and any statement that the person has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

(k) A prosecuting attorney may, on application to the juvenile court, reopen at any time the files and records of a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony sealed by the court under this section for the purposes of Sections 12.42(a)-(c) and (e), Penal Code.

(l) On the motion of a person in whose name records are kept or on the court's own motion, the court may order the destruction of records that have been sealed under this section if:

(1) the records relate to conduct that did not violate a penal law of the grade of felony or a misdemeanor punishable by confinement in jail;

(2) five years have elapsed since the person's 16th birthday; and

(3) the person has not been convicted of a felony.

(m) On request of the Department of Public Safety, a juvenile court shall reopen and allow the department to inspect the files and records of the juvenile court relating to an applicant for a license to carry a handgun under Subchapter H, Chapter 411, Government Code.

(n) A record created or maintained under Chapter 62, Code of Criminal Procedure, may not be sealed under this section if the person who is the subject of the record has a continuing obligation to register under that chapter.

(o) An agency or official named in the order that cannot seal the records because the information required in the order under Subsection (p) is incorrect or insufficient shall notify the court issuing the order before the 61st day after the date the agency or official receives the order. The court shall notify the person who is the subject of the records at issue, or the attorney for that person, before the 61st day after the date the court receives the notice that the agency or official cannot seal the records because there is incorrect or insufficient information in the order.

(p) A sealing order entered under this section must include the following information or an explanation for why one or more of the following is not included:

(1) the person's:

(A) full name;

(B) sex;

(C) race or ethnicity;

(D) date of birth;

(E) driver's license or identification card number; and

(F) social security number;

(2) the offense charged against the person or for which the person was referred to the juvenile justice system;

(3) the date on which and the county where the offense was alleged to have been committed; and

(4) if a petition was filed in the juvenile court, the cause number assigned to the petition and the court and county in which the petition was filed.

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