The Path to SB 1304:  
Juvenile Records  
Advisory Committee

Objective

- To provide the back story on the activities leading to the passage of SB 1304 and the reorganization and revision of Chapter 58, Family Code.
- To highlight the key statutory changes affecting juvenile records enacted during the 85th Session.

Juvenile Records in Texas

Objective

- Development of a unified vision for juvenile justice in Texas;
- Continued realignment of system influences;
- Collaborative policymaking that considers system capacity and a range of perspectives; and
- Child-focused, innovative and incremental strategic change.

Texas Juvenile Justice

85th Session

The Work That Remains...

- Development of a unified vision for juvenile justice in Texas;
- Continued realignment of system influences;
- Collaborative policymaking that considers system capacity and a range of perspectives; and
- Child-focused, innovative and incremental strategic change.
In 2013, SB 1769 FAC examined the practice of fingerprinting low level misdemeanor offenses.

The FAC requested legislative authority to convene the Juvenile Records Advisory Committee.

**Juvenile Records Advisory Committee**

HB 431 by James White

*Filed*

December 2, 2014

*Signed by the Governor*

May 28, 2015
Legislative Charge

November 1, 2016
Report to Legislature and TJJD Board
- Develop a Plan for Chapter 58, Family Code
- Recommend Statutory Revisions
- Prepare Preliminary & Follow-up Reports

December 31, 2018
Duties Expire

The Workgroup...

HB 431 (84th R.S.)
Juvenile Records Advisory Committee

Riley Shaw, Chair
Tarrant County Juvenile Prosecutor

34 Stakeholders

Juvenile Records Advisory Committee
Juvenile Justice System Practitioners
HB 431

Members
▪ chief juvenile probation officers
▪ juvenile prosecutors
▪ juvenile defense attorneys
▪ juvenile court judges
▪ justice or municipal court judges
▪ court administrators/clerks

Juvenile Records Advisory Committee
Representative Stakeholders

Members
▪ peace officers
▪ state agency representatives from TJJD, DPS, and DFPS
▪ juvenile justice advocates
▪ federal records and federal immigration policy experts
▪ members of the public
▪ any other necessary members

MODERNIZATION OF JUVENILE RECORDS
Workgroup Goals

Practitioners urged amendments to:
▪ Bring statutory authority in line with technological advances;
▪ Facilitate the seamless information exchanges between authorized record holders and protect confidentiality;
▪ Streamline protective mechanisms such as sealing and restricted access; and
▪ Uphold the statutory goal of removing the taint of criminality.
The Work...

JRAC

By the Numbers
- 35 Appointees and SMEs
- Multi-Year Commitment
  - 12/2015 to 12/2018
- 6 Full Committee Meetings in 1 Year
- 4 Working Subgroups
- Multiple Conference Calls
- Legislative Drafting Team

JRAC Milestones
- Consensus Building
- Guiding Principles
  - Information Sharing
  - Protected Status
    (Sealing/Restricted Access)
  - Collection & Retention
- Findings & Recommendations
- Report & Legislative Proposals
**JRAC Milestones**

- **Resources on National & Statewide Perspective**
  - Nationwide Scorecard on Juvenile Records
  - Texas Fact Sheet
  - National Review of State Laws on Confidentiality, Sealing & Expungement
  - ABA Model Act
  - DPS Data and Access Levels
  - Input from Additional Stakeholders.

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**Summary of Findings**

*The committee recommended changes that would:*

- Reorganize framework for Chapter 58 of the Family Code.
- Limit access to all JJIS information to criminal justice agencies and specific child-serving entities only.
- Make important changes to age and offense criteria for automatic sealing and reinstate sealing by application.
- Repeal restricted access and address the applicability of justice court expunction orders.
- Make statistical data available for TJJD/DPS recidivism studies after sealing.

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**Legislative Charge & Report**

*Status: Fulfilled*

The JRAC Report was submitted to Legislature and TJJD Board on November 1, 2016.

- Chapter 58 Reorganization Plan
- Revisions to Chapter 58, Family Code and other juvenile records laws –
  - Recommendations
  - Legislative Draft - Supplement
  - Continuing Authority to Meet
- Available on TJJD Website
The Legislation...

SB 1304
Sen. Charles Perry, Dist. 28 - Lubbock

SB 1304
- Filed: March 3, 2017
- Enrolled: May 26, 2017
- Gov. Signed: June 12, 2017
- Effective Date: Sept. 1, 2017

HB 2863 – James White
- Identical Filed: March 3, 2017
- Heard in JJFI Committee
- Sent to Local & Consent Calendar; Withdrawn & Returned - Died

Looking Forward -- SB 1304
- Implementation Recommendations
- Disposition Index
- Update - Juvenile Records in Texas
- Update - Juvenile Records Brochure
- Update – Sample Forms [Juvenile Law Section]
- Training & Webinar Development
2017 Special Legislative Issue

- State Bar Juvenile Law Section Report, Special Legislative Issue.
- Special feature on SB 1304.
- TJJD prepared useful summaries and intent history of key juvenile justice bills enacted during the 85th Legislative Session.
- Available online at www.juvenilelaw.org.

Resource Information

Keeping Up with Juvenile Justice

Texas Legislature Online

Information available --

- Bill Status
- Member Information
- Press Releases
- Live Internet Committee Hearings
- Agendas and Witness Lists
- Fiscal Notes
- Alerts

Where to Get More Information

Juvenile Law Section, State Bar of Texas
www.juvenilelaw.org

Texas Juvenile Justice Department
www.tjjd.texas.gov

TJJD Legal Help Desk
512-490-7121 legalhelp@tjjd.texas.gov
SUBCHAPTER A, CHAPTER 58

- CREATION AND CONFIDENTIALITY OF JUVENILE RECORDS

Law Enforcement Collection and Transmittal of Records of Children

- Modified Heading
- Repealed 58.001(b)
- Forward to DPS info of child taken into custody and referred to juvenile (includes prints)
- Destroy if not referred in 10 days

Effective 9/1/17
10 Day Destruction Audit

- By Dec 31, law enforcement agency certifies to juvenile board that records destroyed
- Board may rather than shall audit to verify
- If audit shows certification to be false, person subject to perjury prosecution

Fingerprints and Photographs

- Need juvenile court consent to print or photograph unless:
  - taken into custody or
  - referred to juvenile court for delinquent conduct even if not taken into custody
- Parental consent not required

Temporary Custody

- LE may take temporary custody to get fingerprints if
  - PC to believe child engaged in DC
  - Other prints found during investigation
  - PC to believe child's prints will match the other prints
Temporary Custody

- May take temporary custody to take photo if:
  - PC to believe child engaged in DC and
  - PC to believe photograph will be of material assistance
- May get photo from JPD without taking into custody

Runaways

- May fingerprint and photograph to establish identify if:
  - PC to believe runaway and
  - Unable to determine identity after reasonable effort
- Must destroy once identify or determine cannot identify

Section 58.003

- Repealed
- Sealing moved to new Subchapter C-1
Victim Info Redaction

- Redact info of victim under 18 unless:
  - Necessary for agency to provide victim services
  - Necessary for law enforcement purposes
  - Shared within JCMS

FC 58.004

Confidentiality of Facility Records

- All records (not just treatment), including information from which a record could be generated, of:
  - TJJD or contract facility
  - Public or private agency or institution having custody under juvenile court order, including a facility operated by or under contract with juvenile board

- No longer includes entity providing supervision by arrangement of juvenile court

FC 58.005 SB 1304 Effective 9/1/17
Facility Records

- May be disclosed only to:
  - Professional staff or consultants of entity
  - Judge, probation officers, staff of juvenile court
  - Attorney for child
  - Governmental agency if disclosure required by law
  - Person or entity to whom child referred for services, if enters into confidentiality agreement
  - TDCJ and TJD for statistical purposes
  - With permission from juvenile court, any person with legitimate interest in work of court
  - As required by 15.27 CCP

Educational Records

- Upon request, school districts and charter school required to share confidential educational records with JSP if child:
  - taken into custody under Section 52.01 or
  - referred to juvenile court
- JSP must certify won’t share info
- JSP may use info only to verify identity and provide delinquency prevention or treatment services

Multi-System Youth

- Upon request, JSP must share with another JSP the personal health info or history of governmental services, including
  - Identity records
  - Medical and dental records
  - Assessment or diagnostic test results
  - Special needs
  - Program placements
  - Psychological diagnoses
  - Other related records or information
Multi-System Youth

- Emphasized that sharing is required/allowed only for the purposes of:
  - Identifying a multi-system youth
  - Coordinating and monitoring care
  - Improving the quality of juvenile services provided

Sharing Info with CPS

58.0052(b-1) #1

- TJJD and DFPS to coordinate and develop protocols for sharing with one another, upon request, any other information necessary to
  - identify and coordinate provision of services to youth and prevent duplication
  - enhance rehabilitation
  - improve and maintain community safety

FC 58.0052 SB 1304
Effective 9/1/17

FC 58.0052(b-1) HB 7
Effective 9/1/17
58.0052(b-1) #2

- At request of a state or local juvenile justice agency, DFPS (or certain contractors) must share information necessary to improve and maintain community safety or that assists in continuing services for or providing services to a youth who:
  - is/was in conservatorship of DFPS (temp or perm)
  - is/was subject of family-based safety services
  - has been reported as alleged victim of abuse/neglect to DFPS
  - is perpetrator or victim in case in which DFPS found RTB for abuse/neglect

58.0052(b-2)

- At request of DFPS or certain contractors, a state or local juvenile justice agency shall share information necessary to improve and maintain community safety or that assists in continuation of services for or providing services to a multi-system youth

Probation Terms

- On request of DFPS, juvenile probation officer must share terms of probation
- DFPS and TJJD have MOU
No Probable Cause Destruction

- Repealed
- Provisions moved to 58.263

Confidentiality of Probation Department, Prosecutor, and Court Records

- Judge, probation officers, and professional staff or consultants of juvenile court
- Juvenile justice agency
- Public or private agency providing supervision/having custody of the child under juvenile court order
- With permission of juvenile court, person with legitimate interest in work of court

Confidentiality of Probation Department, Prosecutor, and Court Records

- Clarified that only an attorney representing a party in the Title 3 proceeding can have access
Confidentiality of Probation Department, Prosecutor, and Court Records

- Person/entity child referred to for treatment if have written confidentiality agreement

Confidentiality of Probation Department, Prosecutor, and Court Records

- Court may disseminate if subject of DTA or warrant

Confidentiality of Probation Department, Prosecutor, and Court Records

- Juvenile can have access to prepare motion for sealing – moved from 58.210
- If child reported missing by parent, information may be forwarded and disseminated by TCIC/NCIC
- Prosecutor may get information for purposes of offering into evidence in punishment phase of criminal proceeding
- Made clear if sealed, prosecutor cannot access

FC 58.007 SB 1304
Effective 9/1/17
Confidentiality of Law Enforcement Records

• May be inspected or copied by:
  – Juvenile justice agency
  – Criminal justice agency
  – Child*
  – Parents*
  * Must redact others’ info before sharing

Confidentiality of Law Enforcement Records

• Must keep separate from adult records, both on paper and electronically
• Must be kept local only and not sent to state or federal depository except as allowed by Chapter 58
• If transferred from TJJD to TDCJ, records can transfer to central state or federal depository for adult records
• If child reported missing, can be forwarded to TCIC/NCIC

Spring Cleaning Destruction

• 58.0071 repealed
• Provisions moved to new subchapter C-1
Fine-Only Misdemeanor Records

- Section 58.00711 Repealed

TJJD Dissemination for Research Purposes

- Renumbered from 58.0072 to 58.009
- TJJD can share with any person working on research or statistical project
- Must have specific confidentiality agreement and processes in place to assure confidentiality
- Optional, not mandatory, for TJJD to provide information – TJJD must approve

Subchapter B - JJIS

- Modified to make it clear DPS may only collect, retain, and share information as provided by Chapter 58
- Language was – may not collect, retain, or share if prohibited by Chapter 58
Subchapter B - JJIS

- Additions:
  - Date of termination of probation supervision
  - Date of termination of deferred prosecution supervision
  - Date of discharge from commitment

DPS Sharing

- 58.106 (a-1) repealed
- DPS can share JJIS data only with:
  - Military, with permission of juvenile
  - Criminal justice agency
  - Noncriminal justice agency if authorized by federal law or executive order to receive JJ info
  - Juvenile justice agency
  - TJJD
  - Office of Independent Ombudsman
  - Court exercising jurisdiction over a juvenile
  - DFPS for background checks for placement purposes

Restricted Access Repealed
DEFINITIONS

• “Electronic record” – any entry in computer file or info on microfilm, microfiche, or any other electronic storage media
• “Juvenile matter” – referral and all related court proceedings and outcomes
• “Physical record” – paper copy of record
• “Record” – any documentation related to a juvenile matter, including information contained in that documentation

EXEMPTED

• DPS or local law enforcement:
  – Gang database
  – Sex offender registration
• Records maintained by TJJD for statistical and research purposes
Sealing

Sealing Without Application – Delinquent Conduct

• Misdemeanor adjudication or referral of misdemeanor or felony with no adjudication
• Entitled to sealing with no application if:
  – 19 years of age
  – No pending charges (adult/juvenile)
  – No adult Class B or higher conviction
  – Never certified as adult
• Does not apply to CINS

Certification of Eligibility

• DPS will certify to JPD that submitted the information to JJIS that the records appear eligible for sealing
• Within 60 days, JPD gives court notice and list of all referrals and outcomes
• Court shall order sealing within 60 days
**Appears Ineligible**

- JPD contacts DPS within 15 days after getting notice
- If determine not eligible, JJIS updated; no further action taken
- If determine eligible, JPD has 30 days from date of determination to give court the info on referrals and outcomes
- Court shall seal within 60 days

**Sealing Without Application - CINS**

- If referred for CINS only, entitled to have all records sealed if:
  - At least 18
  - No delinquent conduct referrals
  - No adult felony conviction or pending adult charges (any level)
- JPD identifies and gives court notice
- Court shall order sealing within 60 days

**Sealing With Application**

- Regardless of eligibility for sealing without application, juvenile can apply for sealing
- No court/filing fee may be charged
- Application must contain certain information set out in statute
Sealing With Application

- Court has discretion to seal if:
  - 18 years of age or if not 18, 2 years since final discharge on every matter referred
  - No pending delinquent conduct matters or adult charges
  - Never certified and no determinate sentence
  - Not currently required to register as sex offender
  - If committed to TJJD (or Travis), has been discharged
- Court can seal with or without hearing

Hearing on Application

- Held no later than 60 days after court receives application
- Must give reasonable notice to
  - Person who is subject of records and attorney (if any)
  - Prosecutor
  - All entities named in application as having records
  - Any individual or entity if person or prosecutor has requested their presence

Order Sealing

- All adjudications vacated
- Proceedings dismissed and treated for all purposes as if they never occurred
- Clerk seals court records, including those in clerk’s case management system
- Clerk sends copy to all entities listed in the order within 60 days
Actions Taken When Receive Order - DPS

• Within 61 days, DPS must:
  – Limit access to records to only TJJD for research and statistical studies
  – Destroy other records, including DNA
  – Send written verification to juvenile court

Actions Taken When Receive Order - TJJD

• Within 61 days, TJJD must:
  – Seal all records other than those exempt under 58.252 (records for statistical purposes)
  – Send written verification to juvenile court

Actions Taken When Receive Order – Agency Providing Supervision or Services

• Within 61 days, other agency or entity that had custody of or provided supervision of or services to juvenile under court order must:
  – Seal all records
  – Send written verification to juvenile court
Actions Taken When Receive Order - Others

- Within 61 days, any other entity receiving order must:
  - Send all records to court
  - Delete all index references
  - Send written verification of deletion to juvenile court

"Sealed"

- Records considered sealed if:
  - Not destroyed and
  - Stored in a manner that allows access only by the custodian of records for the entity possessing the records

Unable to Comply

- If information incorrect or insufficient, entity must notify court within 30 days
- Court to take necessary action to correct, including getting additional information
No Records
• If entity has no records, shall provide written verification of that fact to court within 30 days

Later Inquiry
• “No Records Exist”

Effect of Sealing On Person
• Not required to state was subject of juvenile matter:
  – in any proceeding
  – on housing application
  – on employment application
  – on admission application
  – on licensure application
  – on application for other public or private benefit
• Info in records, fact they once existed, or denial cannot be used against person in any manner
• Subject cannot waive the protected status of the records
Unsealing

- Subject of order can ask court to unseal for any reason
- Prosecutor can ask court to unseal to review for possible use in:
  - Capital prosecution or
  - For enhancement under Section 12.42, Penal Code
- Court, TDCJ, TJJD can request for sex offender screening purposes

Information to Child

- On referral to JPD, employee to give child and parent written explanation describing sealing and a copy of the law
- On final discharge (or last official action if no adjudication), probation officer or TJJD official, as appropriate, gives child and parent written explanation regarding eligibility for sealing and copy of the law
- Law gives specific info that must be included
- TJJD to adopt rules to implement

Not Included

- Specialty court sealing
- Sealing for not true findings
Destruction

No Probable Cause

• If no probable cause found at intake or by prosecutor, court shall order records destroyed
• Moved from 58.006

Permissible Destruction (Spring Cleaning)

• At age 18 if CINS is most serious conduct referred, whether or not adjudicated
• At age 21 if misdemeanor must serious conduct adjudicated or if referred for felony or misdemeanor and not adjudicated
• At age 31 if adjudicated for felony
• Probation, prosecutor, law enforcement, with permission of agency head
Permissible Destruction (Spring Cleaning)

- Applies to all records, no matter when created
- Clarified court can never fully destroy records
- Clarified that if an entity converts paper records to electronic, destroying paper records while keeping electronic does not equal “destruction” under statute
- Does not authorize destruction of records maintained by TJJD for research and statistical purposes

Expunction

- Juvenile records are not subject to an order of expunction issued by any court

TJJD Report on Commitments

- Moved from Section 58.112 FC to Human Resources Code Section 203.019
Applicability

- Records created before, on, or after the effective date

Local JJIS

- Local JJIS can be used for case management for juveniles in juvenile facilities
- Local JJIS can include information obtained for diagnosis, examination, evaluation, treatment, or referral for treatment – court, clerk, probation department, and government and private facilities can access
- Contract facilities can be included in JJIS
- Encryption level up to 2048-bit from 128-bit

Questions

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FC 58.300 et seq.  HB 3705
Effective 9/1/17