



## SEALING OF JUVENILE RECORDS

HB 263/SB 1707

August 27, 2015

### OVERVIEW

During the 84<sup>th</sup> 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, 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 the process. 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.

Recently, the Texas Juvenile Justice Department (TJJD) has received several recurring Legal Help Desk questions about the initial steps toward implementing automatic sealing. In particular, most of the inquirers were seeking guidance on processing issues not addressed in the legislation. The accompanying resource information has been prepared as an educational service to answer questions that will assist local juvenile probation departments, prosecutors and judges in implementing and establishing local policies and procedures to address the laws regarding automatic sealing.

### HB 263/SB 1707 and ELIGIBILITY VERIFICATION ISSUES

**DPS Sealing Notifications by November 1.** One issue mentioned by practitioners statewide centers on concerns about administrative capacity to conduct the searches to determine whether a juvenile’s records are eligible for sealing. The Department of Public Safety (DPS) has agreed to conduct computerized searches of juvenile delinquency history maintained in the Juvenile Justice Information System (JJIS). The Computerized Criminal History (CCH) searches conducted by DPS will also capture subsequent adult criminal history in the Criminal Justice Information System (CJIS). Although the legislation will become effective on September 1, 2015, it is anticipated that DPS will be able to program its system to conduct the searches and regularly upload notifications to CJIS by November 1, 2015.

**Daily Records Searches.** The basics of the process should be very familiar. DPS will conduct a daily record search to identify records that qualify for automatic sealing according to information reported to the Computerized Criminal History file (CCH) and will issue electronic sealing certification notices. Juvenile courts and/or probation departments in each county will be able to retrieve the notifications by logging into the CJIS website maintained by DPS.

**Local Verification.** Since the JJIS repository does not include conduct indicating a need for supervision (CINS) records, the juvenile probation department or court will need to conduct its own CINS records searches in its local case management system (e.g., JCMS/Caseworker or other system) to verify that there are no CINS, pending cases, or subsequent history that would disqualify the record from being sealed.

## WHEN DOES THE NEW SEALING LAW TAKE EFFECT?

### RECORDS AFTER 9/1/2015

The amendments to Section 58.003 apply to the records of a person who becomes eligible for sealing on or after the effective date of September 1, 2015.

### RECORDS BEFORE 9/1/2015

The *prior law* and procedures will continue in effect for records that become eligible for sealing before the September 1, 2015 effective date.

## WHO WILL CONDUCT ELIGIBILITY SEARCHES?

**Retrieval of DPS Notifications.** The Department of Public Safety will conduct the juvenile history searches to determine which juveniles qualify for sealing. Designated juvenile probation department personnel who routinely retrieve restricted access notifications from the Criminal Justice Information System (CJIS) will be the most familiar with the process for downloading the sealing notifications. The DPS process will address many of the concerns expressed by courts and departments that do not have the technological resources or staff to fulfill this function. DPS will:

- Conduct searches of the JJIS/CJIS database on a daily basis.
- Electronically generate reports and notices that will be accessible by juvenile court staff or the referring county juvenile probation department.
- Upload sealing eligibility certification notices which can be retrieved at the Department of Public Safety's CJIS website at <https://cch.txdps.state.tx.us>.

Juvenile probation departments and/or juvenile courts will need to verify eligibility for CINS offenses or other pending or subsequent conduct.

## HOW IS AUTOMATIC SEALING DIFFERENT FROM RESTRICTED ACCESS?

The amendments to Section 58.003 are part of an effort to simplify and “automate” the sealing of juvenile records. Nevertheless, the requirements of HB 263/SB 1707 have created a unique resemblance between “automatic sealing” and “automatic restricted access” since each process occurs without the necessity of filing an application or motion in court. It may be helpful to briefly consider the differences between the two mechanisms. Sealing and restricted access are different in the following ways: 1) how the process is initiated; 2) how the records are disposed after the court has issued an order; and 3) whether the records are reopened or available to any persons or entities after court action.

Under prior law, sealing has been initiated by an application or motion filed by an attorney. Once a sealing order is issued, all paper files are sent to the juvenile court and all computer indexes are deleted. A sealed record may be reopened only under specific circumstances permitted by law. Most importantly, sealing results in deletion of the juvenile's history of contact events, offense adjudications and dispositions in the JJIS as if it never happened. Restricted access, on the other hand, occurs as a matter of right without action by the juvenile who meets the age and offense eligibility requirements. The disclosure of juvenile records is limited only to criminal justice agencies for criminal justice

purposes. Restricted access records are not destroyed or sealed but remain in place. These records may be unrestricted for subsequent convictions.

### WHAT IS THE ROLE OF THE DEPARTMENT OF PUBLIC SAFETY?

The Juvenile Justice Information System (JJIS) is the records repository maintained by the Department of Public Safety (DPS) which includes comprehensive juvenile custody, contact events, court action and dispositional events relating to Class B misdemeanor offenses and above. The DPS computer system will be programmed to identify the last action date, offense and age eligibility requirements set forth in Section 58.003 of the Family Code and will issue regular certification notices that a record qualifies for sealing. The searches and notifications for restricted access and sealing will remain separate.

### WHAT IS THE ROLE OF THE JUVENILE PROBATION DEPARTMENT?

Juvenile probation departments maintain many of the physical files and records and case management records in connection with referrals, supervision and court proceedings under Title 3 of the Family Code. While some of the obligations under the new law have shifted to the court, it is envisioned that the juvenile probation department will facilitate certain aspects of the sealing process. Some of the 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.

**Retrieval of CJIS Notifications.** The CJIS site is a secure website and may only be accessed with an authorized User ID and password. Each juvenile probation department or court will need to identify: 1) the name of one person designated to receive sealing certification notices on behalf of the probation department or court; and 2) the county-issued email address of the designee. Remember that the email account must be associated with the juvenile probation department's ORI number. Once on the CJIS site, follow the information prompts to request access.

**Local Verification.** The juvenile probation department will be required to conduct independent searches in its local case management system for disqualifying CINS conduct and other pending or subsequent history.

**Identification of Agencies.** Under prior law, it was the role of the attorney to identify the potential record holders and custodians of records and the addresses to send the sealing orders. The elimination of the sealing application means that the person's attorney will no longer be involved in the process. Although the statute shifts this responsibility to the court, the juvenile probation department may be able to assist in identifying the agencies it has reason to believe holds files or records. *See Issuance of Sealing Orders and Identification of Agencies.*

### WHAT IS THE ROLE OF THE JUVENILE COURT?

Although Section 58.003(a) specifies that the court shall determine sealing eligibility, DPS will utilize existing juvenile records JJIS/CJIS search capacity to determine eligibility and provide electronic certification notices for sealing. Once the juvenile court (or other designated entity) receives the DPS sealing eligibility certification, it is required to notify the prosecutor. Specifically, Section 58.003(e) requires that notice must be sent to the prosecutor prior to the time the record becomes eligible. As

such, the notice should conceivably be sent after receiving the DPS notification, but before the local verification process is complete.

## **COURT-INITIATED AUTOMATIC SEALING**

Under the new law, the sealing process is initiated without the need to file an application. The court-initiated sealing applies to both felony and CINS/misdemeanor records. Instead, the court must take certain actions to begin the process. There will need to be two procedures in place until the earlier records are phased out.

### **Records eligible for sealing BEFORE September 1, 2015**

The sealing process is initiated upon receipt of an application or petition filed in juvenile court by the person's attorney. Use existing procedures for records that become eligible for sealing before September 1, 2015.

### **Records eligible for sealing AFTER September 1, 2015**

Under HB 263/SB 1707, an application or petition by the person is NO LONGER required.

- DPS will conduct searches to certify eligibility for sealing.
- DPS eligibility certification notices will trigger the automatic sealing procedures.
- Written notice should be sent to the prosecutor to advise that records may be eligible for sealing pending local verification of CINS conduct (not included in the JJIS) as well as known subsequent or pending proceedings.
- If the prosecutor requests a hearing, follow the procedures under Section 58.003(e).
- If no request for hearing, the court should immediately sign the sealing order.
- Juvenile court or juvenile probation department will send the sealing order to the person who is the subject of the records and entities with records of contact, supervision, care, custody events.
  - Entities have 61 days to transfer records to the clerk of court and delete all index references, as applicable.
  - Holders are required to respond to all inquiries that no records exist.

## **WHAT ARE THE BASIC CRITERIA FOR SEALING A JUVENILE RECORD?**

**NOTE:** *This is merely a brief explanation of the general sealing criteria and is provided as a convenience only. Please rely on the juvenile prosecutor and courts to evaluate the records and circumstances of each case and refer to Section 58.003 of the Family Code and other applicable provisions.*

**What is sealing?** Sealing refers to the formal process to protect by court order confidential juvenile records and information from disclosure to the public. Not all records are eligible for sealing. Sealing is available only if certain statutory age, offense and case posture criteria have been met. It is important to remember that the most serious offense controls for purposes of determining eligibility. Sealed records may be reopened only under specific circumstances.

**What records are eligible?** HB 263/SB 1707 did not change the statutory criteria. The mandatory and discretionary sealing provisions remain in place.

An adjudicated or non-adjudicated juvenile record is ELIGIBLE for sealing:

**MANDATORY (CINS/Misdemeanor Offenses)**

- **2 YEARS** after discharge or last official action, if no adjudication, plus the following criteria:
  - No subsequent felony or misdemeanor crime of moral turpitude convictions;
  - No subsequent CINS or delinquent conduct adjudications; and
  - No pending adjudications or convictions.

**DISCRETIONARY (Felony Offenses)**

- At **AGE 19** for felony adjudications, plus the following criteria:
  - Not certified as an adult;
  - Records have not been admitted into evidence in the punishment phase of a criminal proceeding; and
  - No subsequent felony convictions after age 17.

**What records are NOT eligible?** The juvenile court may **not** seal the records of a person who has been adjudicated for:

- Determinate sentence offenses listed in 53.045, FC
- Habitual felony offenses listed in 51.031, FC

**Also,** records may not be sealed if the person is obligated to register as a sex offender under Art. 62, CCP until the requirement to register has ended.

**IS THERE A DIFFERENT PROCESS FOR SEALING FELONY RECORDS?**

The new process for sealing applies to records of felonies as well as CINS and misdemeanor offenses. The distinction is that the CINS and misdemeanor records are sealed as a matter of right and the timing for initiating sealing is based on the two-year time frame from discharge or last official action in the case. In contrast, the initiation of sealing for felonies is triggered when the juvenile attains the age of 19 and meets the other statutory criteria. The key procedural difference is that now, if the prosecutor does not request a hearing, the felony record is immediately sealed.

**HOW ARE HEARINGS AND NOTICES HANDLED?**

Section 58.003(e) requires that notice must be sent to the prosecutor prior to the time the record becomes eligible for sealing.

**If the Prosecutor Does Not Request a Hearing to Object to Sealing:**

- Hearing is not required.
- On the court’s own motion, the judge will sign the order to seal the records.

**If the Prosecutor Requests a Hearing to Object to Sealing:**

- Schedule the hearing.
- Provide reasonable notice of the hearing to:
  - the person who is the subject of the records;
  - the prosecutor (recommended but not required in statute); and

- persons/entities with custody of records:
  - authority granting discharge from an institution or parole
  - public or private agency or institution
  - law enforcement agency
- If, after the hearing, the court signs the sealing order--
  - Send the order to appropriate entities.
- Entities have 61 days to transfer records to the clerk of court and delete all index references, as applicable.
- Holders are required to respond to all inquiries that no records exist.

#### No Hearing for Not Guilty Finding

- Immediate, automatic, mandatory court order to seal [58.003(d)]
- Additional hearing is not required

#### Hearings & Records Eligible for Sealing Prior to September 1, 2015

- The juvenile court is required to hold a hearing unless the prosecutor consents and the applicant and attorney agree in writing that a hearing is not necessary.

#### Hearings & Reasonable Notice to the Juvenile

Section 58.003(e) requires that reasonable notice of the hearing to seal records should be given to “the person who is the subject of the records at issue.” It is suggested that departments advise youth as they exit the system that it is their responsibility to keep the department apprised of current address through their 20th birthday, so that they may be notified of any hearings related to the sealing of records. A record should be made of notice being sent to the juvenile's last known address in order to document reasonable efforts. Practitioners have cautioned that the failure to provide the notice to the person who is the subject of the records may have due process implications, especially if the court denies the sealing order.

### **DO WE NEED NEW FORMS OR SEALING ORDERS?**

**Application Not Required.** The requirement for a legal formal pleading such as a motion or application has been eliminated under the new law.

**Revise the Sealing Order.** It will be necessary to revise current sealing orders for records that become eligible for sealing on or after September 1, 2015. As amended, Section 58.003 (p) requires the following identifiers must be included in the sealing order (or provide a reason why it is not included):

- |  |                                     |
|--|-------------------------------------|
| ▪ Full Name                                    | ▪ Address                           |
| ▪ Sex  | ▪ Date of Offense                   |
| ▪ Race or Ethnicity                            | ▪ Location/County of Offense        |
| ▪ Date of Birth                                | ▪ Cause Number Assigned to Petition |
| ▪ Driver License or Identification Card Number | ▪ Court and County Petition Filed   |
| ▪ Social Security Number                       | ▪ TRN (Incident Tracking Number)*   |

\*The Department of Public Safety has requested that the Incident Tracking Number (TRN) be included on the sealing order.

**Note:** *It is recommended that sample forms used to prepare sealing orders should be reviewed and updated by your local juvenile court prosecutor for legal sufficiency and adapted for your county's particular situation or drafting preferences.*

## ISSUANCE OF SEALING ORDERS & IDENTIFICATION OF AGENCIES

Under prior law, the juvenile navigated the procedural aspects of sealing with the assistance of an attorney. The attorney would gather the information necessary to identify arrests and other contact events as well as assist in the preparation of a sealing order that lists the entities and agencies that may hold the records pertaining to the juvenile applicant.

Under the new automatic sealing process, there is no need for the juvenile to hire an attorney since this responsibility has shifted to the court. For purposes of the issuance of sealing orders under Section 58.003, the officials, agencies, and entities which the person may have had contact while under the jurisdiction of the juvenile court should also be identified.

- Referring Law Enforcement Agency
- Juvenile Probation Department
- District or County Attorney (Prosecutor)
- Texas Department of Public Safety DPS – Crime Records Department & JJIS
- Clerk of the Juvenile Court
- Schools
- Agency granting the discharge, if the final discharge was from an institution
- Texas Juvenile Justice Department (commitment to a state institution)
- Other (State Hospitals, Placements, Treatment Providers, etc.)

## DID THE SPECIAL SEALING PROVISIONS CHANGE?

No substantive procedural changes were made to the criteria for the special sealing provisions affecting drug court, CINS prostitution, CINS sexting and human trafficking.

## WHEN SHOULD WE START THE NEW SEALING PROCEDURES?

While the new law takes effect on September 1, 2015, the ability to retrieve the eligibility certification notices will not be available until November 1, 2015. This may result in an initial “backlog” until the eligibility certification information is available on the CJIS website.

Prior to November 1, 2015, DPS will report each county's projected number of sealing notifications uploaded to the CJIS system for the period between September 1, 2015 and November 1, 2015 so that each department will be able forecast an estimated number of initial sealing certifications that will need to be processed. The juvenile court, prosecutor and juvenile probation department should be able to fulfill the remaining obligations outlined in the Family Code for the issuance of the sealing order, including required notices and related hearings.

## WHERE CAN I READ THE NEW LEGISLATION?

You may access HB 263 and SB 1707 (identical bills) in their entirety by clicking on the following links:

[HB 263](#) by Miles

[SB 1707](#) by Huffman

## JUVENILE PROBATION OFFICER'S DUTY TO EXPLAIN

Section 58.003(i) of the Family Code requires a juvenile probation officer to provide a written explanation of the right to sealing on final discharge of a juvenile or the last official action, if there is no adjudication. It will be necessary to review and revise written information or scripts used by the juvenile probation department to incorporate the new automatic sealing process. TJJD is in the process of updating the informational brochure "Texas Juvenile System Files and Records" that will soon be available for download on the publications page of the TJJD website.

### ***Where can I get more information?***

If you have any additional questions about this memo, please contact the Texas Juvenile Justice Department's Legal Help Desk at (512) 490-7121 or [legalhelp@tjpc.state.tx.us](mailto:legalhelp@tjpc.state.tx.us). It is recommended that this resource information should be reviewed by the local juvenile court administrator, prosecutor and juvenile probation department records personnel.