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JUVENILE RECORDS
ADVISORY COMMITTEE

LEGISLATIVE REPORT

.....
2018



JUVENILE RECORDS
ADVISORY COMMITTEE

H.B. 431

JUVENILE RECORDS ADVISORY COMMITTEE

CHAPTER 58, Texas Family Code

Supplemental Report:

86th Session Juvenile Records

Legislative Proposals and Commentary

October 2018

This supplemental report contains the legislative proposals and explanatory commentary on juvenile records statutes and related laws in Texas.



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EXECUTIVE SUMMARY



The Juvenile Records Advisory Committee (JRAC) was established by House Bill 431 (84th R.S.) to conduct a comprehensive examination of Chapter 58 of the Family Code and related laws. Since 2015, the committee has convened a series of facilitated meetings over a period of two and one-half years to assess the statutes that regulate juvenile records in Texas. On November 1, 2016, the committee published a report on the workgroup’s findings and laid out its plan to accommodate the state’s changing

needs regarding the management and sharing of juvenile justice system information and records. The workgroup’s publication of the *H.B. 431 Report and Reorganization Plan* was followed by a supplemental report *Juvenile Records Advisory Committee Legislative Proposals* in December 2016 that contained proposals for an extensive revision of Chapter 58 of the Family Code. These reports articulated the broad legal and policy vision of the workgroup and examined the strengths and weaknesses of current juvenile records practices as well as the issues associated with information-sharing, sealing, and other procedural mechanisms designed to protect the confidential information of justice-involved youth.

The Texas Legislature carried the JRAC recommendations forward in Senate Bill 1304, which was effective on September 1, 2017. As enacted, the revisions to Chapter 58 transformed certain aspects of the age and offense criteria for sealing and assigned implementation and administrative obligations to juvenile probation departments, related court personnel, agencies, and other entities that maintain physical and electronic records created in connection with juvenile delinquency proceedings.

Implementation of SB 1304

Since the enactment of SB 1304, the Juvenile Records Advisory Committee, Texas Juvenile Justice Department (TJJD), and Department of Public Safety (DPS) have made important strides to ensure the effective implementation of the procedural requirements of the new laws. Specifically, TJJD’s Office of General Counsel (OGC) developed resource information and tracked trending questions on the juvenile records statutes. TJJD Attorneys also conducted training at various statewide conferences and venues to reach a cross-section of juvenile justice stakeholders, including attorneys, judges, law enforcement officers, juvenile probation officers, court administrators, and data coordinators. An in-depth section-by-section analysis of the juvenile records amendments was included in the *2017 Special Legislative Issue*, a joint publication developed by TJJD and the Juvenile Law Section of the State Bar of Texas and distributed to practitioners statewide. In addition, TJJD prepared and made available legal education documents entitled *Summary of Juvenile Laws in Texas*, a guide for juveniles, and a quick reference chart.¹ TJJD also worked closely with the Juvenile Law Section of the State Bar of Texas to

¹ TJJD developed the following resource information available online to juvenile justice practitioners around the state.
[A Summary of Texas Family Code Provisions Regarding Juvenile Records in Texas](#) (Last accessed September 24, 2018).
[Juvenile Records: Sealing and Destruction – Texas Family Code Chapter 58, Subchapter C-1](#) (Last accessed September 24, 2018).

develop sample legal pleadings and forms for use by defense attorneys, prosecutors, and court personnel.

In addition, DPS promptly initiated programming efforts to develop software functionality to fulfill the requirement to certify and provide eligibility notifications to juvenile probation departments. The *Juvenile Justice Information System (JJIS) Worklist* uploads eligibility information on a daily basis. The information may be retrieved using the juvenile probation department's originating agency identifier number (ORI). DPS also worked closely with TJJD to match JJIS records to determine sealing eligibility for juveniles with history of only conduct indicating a need for supervision (CINS) offenses. Each agency facilitated training and communication with the juvenile probation field and other practitioners to provide guidance regarding administrative practices and other matters not addressed in the legislation. These collaborative activities assisted the workgroup to identify key areas for cleanup and other substantive clarifications to SB 1304.

Efforts In Advance of the 86th Legislative Session

In July 2018, the JRAC Legislative Drafting Team held an on-site meeting and conference call at TJJD's Central Office to review the suggestions and feedback from committee members, judges, and other practitioners compiled over the past year. Through this process, topical areas in need of further clarification or revision were identified. Given the significant legislative revisions to Chapter 58 of the Family Code over the past two legislative sessions, the workgroup focused primarily on cleanup and certain substantive clarifications to enhance the practical implementation of the 2017 enactments. The Juvenile Records Advisory Committee submitted the *Supplemental Report* to the Texas Juvenile Justice Department Board for consideration and review at its October 26, 2018 regular meeting. The advisory committee has continuing authority to convene and carry out its statutory duties until December 31, 2018.

Avoiding the Pendulum Effect

The underlying assumption that guided the advisory committee's efforts was the notion of statutory stability. Specifically, the workgroup examined the amendment activity for the sealing provisions over recent legislative cycles. This process helped the workgroup to pinpoint well-intentioned statutory changes proffered by entities with different system objectives. As a result, practitioners expressed ongoing concerns about the overall impact of frequent legislative amendments on the implementation, consistency, and uniformity of sealing procedures and local policies. To that end, a firm objective of the workgroup was to take measures to avoid the pendulum effect that has dramatically affected local practices each time a records-related statutory change is enacted.

[A Juvenile's Guide to Understanding Juvenile Records and Sealing](#) (Last accessed September 24, 2018).
<https://juvenilelaw.org/resources/forms/> (Last accessed September 24, 2018).

KEY FINDINGS

In 2016, the Juvenile Records Advisory Committee published the *H.B. 431 Report and Reorganization Plan* and a *Supplemental Report* to present the workgroup's findings and recommendations to accommodate the ever-evolving needs of the Texas juvenile justice system to properly manage and share juvenile records. This *2018 Supplemental Report* contains key findings as well as legislative proposals, including explanatory commentary, for amendments to Chapter 58 of the Family Code and related laws for consideration by legislative leadership in advance of the 86th Legislative Session in 2019.

Based on its assessment of the 2017 juvenile records statutes, the committee concluded that:

1. selected provisions in Chapter 58 of the Family Code are in need of clarification or cleanup since the enactment of SB 1304 during the 85th Legislative Session;
2. it is in the state's interest to ensure stability and continuity of statewide procedures and practices;
3. continued collaboration of state agencies and juvenile justice practitioners is essential to successful implementation of the long-term system objectives of the workgroup; and
4. further investigation and research are necessary to address matters of legal, technological, or administrative importance.



SUMMARY OF RECOMMENDATIONS

The committee has developed a number of legislative amendments for consideration that would:

1. authorize juvenile service providers to share certain information without a written confidentiality agreement in order to promote greater administrative efficiency while protecting the information from subsequent disclosure;
2. allow facilities, including TJJD, to share information with a non-parent or guardian with whom a child may be placed upon release from the facility;
3. allow sharing of juvenile information needed for purposes of an administrative or court hearing such as workers compensation hearings or matters before the State Office of Administrative Hearings (SOAH), while requiring identifiable information be redacted prior to sharing and protecting the information from subsequent disclosure;

4. allow information maintained by probation departments, prosecutors, and courts to be shared with juvenile service providers without requiring a written confidentiality agreement while still protecting the information from subsequent disclosure;
5. make intervention and prevention records, which are not juvenile records because they are typically related to children not referred for delinquent conduct or conduct indicating a need for supervision, confidential and limit the disclosure of these records to a person or entity providing prevention and intervention services;
6. clarify that, in addition to a person, TJJD may release identifiable juvenile justice information in its possession to an entity working on a research or statistical project approved by TJJD, as long as there is a written agreement that protects the confidential information;
7. allow TJJD to share identifiable data with the Department of Family and Protective Services for research purposes;
8. make records of a child referred only for conduct indicating need for supervision (CINS) subject to mandatory sealing only if the case resulted in a court filing;
9. modify eligibility criteria to allow juvenile records to be sealed by application at the earlier of age 17 or one year after discharge as opposed to age 18 or two years after discharge;
10. restore the statutory provisions that authorize a juvenile's record to be sealed by the court upon a finding of not true on all allegations in a matter;
11. clarify that a sealing order may be delivered in ways other than via certified mail, including by electronic mail;
12. clarify that upon a finding of no probable cause, the court must order the records destroyed even if the child was not taken into custody but instead the offense referral was forwarded to the intake entity;
13. make corrective enumeration and citation changes to certain provisions; and
14. repeal certain provisions in order to correct and conform duplicative prior legislative enactments.



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**PROPOSED
LEGISLATION &
COMMENTARY**

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FAMILY CODE
TITLE 3. JUVENILE JUSTICE CODE
CHAPTER 58. RECORDS; JUVENILE JUSTICE INFORMATION SYSTEM

86th Session Legislative Proposals

SECTION 1. Section 58.005, Family Code, is amended by amending subsection (a-1) and adding subsection (c) to read as follows:

(a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;
- (5) a person or entity to whom the child is referred for treatment or services, including assistance in transitioning to the community upon release [if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information];
- (6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;
- (7) a juvenile court prosecutor;
- (8) a person with whom a child will live after release, even if that person is not a parent or legal guardian;
- (9) a government agency or court, for administrative or legal proceedings; or
- (10) ~~(7)~~ with permission from the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) A person or entity receiving information as allowed by this section may not disclose the information except as otherwise allowed by law.

(d) Identifiable information regarding the child must be redacted before a record is provided as allowed by subsection (a-1)(9).

Commentary

The change in Section 58.005 (a-1)(5), which is consistent with the change to Section 58.007, below, is to allow sharing with service providers without a written confidentiality agreement. The new (a-1)(7) allows a juvenile facility to share information with a juvenile prosecutor, as may be necessary to comply with the Michael Morton Act. The new (a-1)(8) allows a facility, including TJJD, to share

information with a non-parent or guardian with whom the child may be placed upon release from the facility. The person receiving the information may not share it unless authorized by law. The new (a-1)(9) allows for sharing of information in administrative or court hearings (ex: SOAH, worker's comp); however, new (d) requires that the child's identifiable information be redacted before the information is shared. New (c) clarifies that an entity receiving information under this provision may not share that information unless authorized by law to do so.

SECTION 2. Section 58.0052(b-1), Family Code, as amended by Chapter 317 (H.B. 7), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

~~[(b-1)]~~ (b-3) In addition to the information provided under Subsection (b), the Department of Family and Protective Services and the Texas Juvenile Justice Department shall coordinate and develop protocols for sharing with each other, on request, any other information relating to a multi-system youth necessary to:

- (1) identify and coordinate the provision of services to the youth and prevent duplication of services;
- (2) enhance rehabilitation of the youth; and
- (3) improve and maintain community safety.

Commentary

Last session, two different bills created two different subsections, both numbered (b-1). This change to Section 58.0052 rennumbers one provision to subsection (b-3).

SECTION 3. Section 58.007, Family Code, is amended by amending subsection (b) and adding subsections (c) to read as follows:

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney representing a child's parent ~~[party]~~ in a proceeding under this title;
- (4) an attorney for the child;
- (5) a prosecuting attorney as defined by Section 51.02(11);
- ~~(6) a person or entity to whom the child is referred for treatment or services~~
~~[, if the agency or institution disclosing the information has entered into a written~~

confidentiality agreement with the person or entity regarding the protection of the disclosed information];

(75) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(86) with permission from the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(c) A person or entity receiving information as allowed by this section may not disclose the information except as otherwise allowed by law.

Commentary

Subsection 58.007(a)(3) is amended to clarify that only an attorney representing a parent in a Title 3 proceeding is authorized to have access to the records, whereas subsection (a)(4) allows an attorney representing a child in any proceeding to have access to the records. Subsection (a)(5) makes it clear that a juvenile court prosecutor may access the records. Subsection (a)(6) is amended to allow sharing of information with juvenile service providers without requiring a written confidentiality agreement. New (c) clarifies that an entity receiving information under this provision may not share that information unless authorized by law to do so.

SECTION 4. Section 58.008(b), Family Code, is amended to read as follows:

(b) Except as provided by Subsection [(d)](c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Commentary

The change to Section 58.008(b) addresses an incorrect citation that was not corrected when provisions were renumbered last session.

SECTION 5. Section 58.009, Family Code, subsections (d) and (f) are amended to read as follows:

(d) The Texas Juvenile Justice Department may grant the following individuals or entities access to juvenile justice information only for a purpose beneficial to and approved by the department:

- (1) a person or entity working on a research or statistical project that:
 - (A) is funded in whole or in part by state or federal funds; and
 - (B) meets the requirements of and is approved by the department; or
- (2) a person or entity who ~~[working on a research or statistical project that]~~:
 - (A) is working on a research or statistical project that meets the requirements of and is approved by the department; and
 - (B) has a specific agreement with the department that:
 - (i) specifically authorizes access to information;
 - (ii) limits the use of information to the purposes for which the information is given;
 - (iii) ensures the security and confidentiality of the information;
 - (iv) provides for sanctions if a requirement imposed under Subparagraph (i), (ii), or (iii) is violated.

(f) The Texas Juvenile Justice Department may not release juvenile justice information in identifiable form, except for information released under Subsection (c)(1), (2), ~~[or (3), or (4)]~~ or under the terms of an agreement entered into under Subsection (d)(2).

Commentary

Section 58.009 sets out TJJD's authority to share juvenile justice information that it collects from juvenile probation departments. The changes clarify that, in addition to a person, the information may be released to an entity working on research or statistical projects that have been approved by TJJD as long as there is an agreement between the researcher and TJJD, as set out in subsection (d). The change in subsection (f) allows TJJD to share identifiable information with the Department Family and Protective Services (DFPS).

SECTION 6. Section 58.255(a), Family Code, is amended to read as follows:

(a) A person who was referred to a juvenile court ~~[probation department]~~ for conduct indicating a need for supervision is entitled to have all records related to all conduct indicating a need for supervision matters sealed without applying to the juvenile court if the person has records relating to the conduct filed with the clerk of court and:

- (1) is at least 18 years of age;

(2) has not been referred to the juvenile probation department for delinquent conduct;

(3) has not as an adult been convicted of a felony; and

(4) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

Commentary

Section 58.255 applies to the sealing of records of a child referred to the juvenile court for conduct indicating a need for supervision (CINS) and never for delinquent conduct. CINS offenses are minor in nature and are not recorded in the Juvenile Justice Information System maintained by DPS or in any other statewide database. The vast majority of CINS cases are handled through informal measures, such as supervisory caution or deferred prosecution, and are never referred to the court. This change provides that only those CINS cases that actually result in a court filing are subject to mandatory sealing. The records of the juvenile probation department, law enforcement entities, and prosecutors remain subject to destruction under Section 58.264, Family Code.

SECTION 7. Section 58.256(c), Family Code, is amended to read as follows:

(c) Except as provided by Subsection (d), the juvenile court may order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person:

(1) is at least 17 [~~18~~] years of age, or is younger than 17 [~~18~~] years of age and at least one year has [~~two years have~~] elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department;

(2) does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court;

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

(4) has not as an adult been convicted of a felony; and

(5) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

Commentary

Some individuals have expressed a desire for courts to be able to seal records earlier than age 18 or, if the child is younger, without requiring a two-year waiting period. The change in Section 58.256 allows for sealing by application to occur at the earlier of age 17 or one year after discharge. This maintains legislative stability by continuing to ensure that sealing of a record occurs once for the entire record. Until the records are sealed, all juvenile probation departments continue to have

access to information on services provided to each juvenile and his or her risks and needs in order to better ensure matching of appropriate services and to provide greater efficiency in meeting the juvenile's needs.

SECTION 8. Subchapter C-1, Chapter 58, Family Code, is amended by adding Section 58.2561 to read as follows:

Sec. 58.2561. SEALING OF RECORDS ON A FINDING OF NOT TRUE. The court, on its own motion and without a hearing, shall immediately order the sealing of records in a juvenile matter if the court enters a finding of not true on all allegations.

Commentary

This change restores the provision in law that records must be sealed by the court when there is a finding of not true on all allegations in a matter.

SECTION 9. Section 58.258, Family Code, is amended by adding subsection (d) to read as follows:

(d) An order may be delivered to an entity listed in the order via any reasonable method, including via certified mail, regular mail, or email.

Commentary

The change in Section 58.258 makes it clear that orders to seal records may be delivered in ways other than via certified mail.

SECTION 10. Section 58.263, Family Code, is amended to read as follows:

Sec. 58.263. DESTRUCTION OF RECORDS: NO PROBABLE CAUSE. The court shall order the destruction of the records relating to the conduct for which a child is taken into custody or referred to juvenile court without being taken into custody, including records contained in the juvenile justice information system, if:

(1) a determination is made under Section 53.01 that no probable cause exists to believe the child engaged in the conduct and the case is not referred to a prosecutor for review under Section 53.012; or

(2) a determination that no probable cause exists to believe the child engaged in the conduct is made by a prosecutor under Section 53.012.

Commentary

This change clarifies that if there is a finding of no probable cause, the court must order the records destroyed even if the child was not taken into custody but instead the offense referral was forwarded to the intake entity.

SECTION 11. Section 203.0065, Human Resources Code, is amended by adding subsection (g) to read as follows:

(g) Records related to a person served by a prevention and intervention program operated under this section are confidential and may only be inspected by, copied by, or shared with a person or entity to whom the person is referred for services. The person or entity receiving the records may not disclose them.

Commentary

Both TJJD and juvenile probation departments are authorized to provide prevention and intervention services. These programs are for children who have never been referred for delinquent conduct or conduct indicating a need for supervision. As such, records about these children do not meet the definition of juvenile records and are not protected under current law. New subsection (g) is designed to make these records confidential and to limit disclosure to a person or entity providing prevention and intervention services. The person or entity receiving the records may not disclose them.

SECTION 12. Sections 58.003(c-3), 58.0053, and 58.007(j), Family Code, are repealed.

Commentary

Section 58.003 was fully repealed in SB 1304 last session. However, the non-substantive corrections bill made a change in 58.003(c-3), so this provision currently remains in law. This repeal will correct that.

Section 58.0053 is a provision about sharing juvenile probation terms with DFPS; it is no longer necessary due to the expansion of language in 58.0052 last session.

Section 58.007(j) is applicable to law enforcement records and was inadvertently not removed from this section when law enforcement records were moved to new 58.008; the language is in 58.008, as appropriate.