

Sealing and Destruction of Juvenile Records

Summary of 2017 Legislative Changes

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SEALING WITH APPLICATION	SEALING WITHOUT APPLICATION	DESTRUCTION	PERMISSIBLE DESTRUCTION
<p>The court-ordered sealing of juvenile records for protection and safekeeping. Sealed records may only be inspected or released under certain circumstances. [§58.256, FC]</p>	<p>The scheduled court-ordered sealing of juvenile records based on age and eligibility criteria for protection and safekeeping. [§58.253 and 58.255 FC]</p>	<p>The permanent destruction of records pertaining to a juvenile matter as ordered by the juvenile court. [§58.263, FC]</p>	<p>The permanent destruction of records authorized by the head of an entity to facilitate efficient record storage and maintenance (i.e., “spring cleaning”). [§58.264].</p>
ELIGIBILITY			
<p style="text-align: center;">All Matters</p> <p>Age 18; or Under 18 and 2 Yrs After Final Discharge Must meet statutory requirements. [§58.256(c) (1-5), FC]</p> <ul style="list-style-type: none"> ▪ No Pending Delinquent Conduct ▪ Never Certified as an Adult ▪ No Adult Felony Convictions ▪ No Pending Adult Charges (Felony or Jailable Misdemeanor) <p>Entire Record Eligibility relates to each referral in the juvenile’s entire record. [§58.256(c) and §58.258(a)(2), FC]</p> <p>Exceptions See <i>Ineligible History Below</i></p> <p>Special Sealing Provisions The provisions that allowed the court to seal records upon completion of a drug court, CINS prostitution, sexting and victims of human trafficking program were <u>REPEALED</u> in 2017. [SB 1304]</p>	<p style="text-align: center;">Delinquent Conduct</p> <p>Age 19 Misdemeanor Adjudications and No Adjudication Felony No Adjudication Must meet statutory requirements. [§58.253(b)(1-6), FC]</p> <ul style="list-style-type: none"> ▪ No Felony Adjudications ▪ No Pending Delinquent Conduct ▪ Never Certified as an Adult ▪ No Adult Convictions (Felony or Jailable Misdemeanor) ▪ No Pending Adult Charges (Felony or Jailable Misdemeanor) <p style="text-align: center;">CINS</p> <p>Age 18 Must meet statutory requirements. [§58.255(a)(1-4), FC]</p> <ul style="list-style-type: none"> ▪ No Delinquent Conduct Referrals ▪ No Adult Felony Convictions ▪ No Pending Adult Charges (Felony or Jailable Misdemeanor) 	<p style="text-align: center;">All Matters</p> <p>No Referral Fingerprints, photos and related custody event documents must be destroyed if the case is not referred to the juvenile court within 10 days. [§58.001, FC]</p> <p>No Probable Cause Finding Destruction is required when intake or the prosecutor determines no probable cause exist that the child engaged in conduct. [§58.263, FC]</p>	<p style="text-align: center;">All Matters</p> <p style="text-align: center;">CINS and Misdemeanors</p> <p>Age 18 CINS Alleged, Adjudicated Age 21 MISD Alleged, Adjudicated</p> <p style="text-align: center;">No Action</p> <p>Age 18 No Action, Referral was not CINS or Delinquent Conduct</p> <p style="text-align: center;">Felony</p> <p>Age 21 FELONY Alleged, No Adjudication Age 31 FELONY Adjudication [§58.264(b), FC]</p>

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INELIGIBILITY			
<p style="text-align: center;">Ineligible History</p> <ul style="list-style-type: none"> ▪ See §58.256(c), FC; and <p style="text-align: center;">Application/Order Prohibited</p> <ul style="list-style-type: none"> ▪ Determinate Sentence/Habitual Felony Adjudications ▪ SXO Registration – Active Duty ▪ Committed to TJJJ ▪ Committed to Travis Co. PS Facility [§58.256(d)(1-3), FC] 	<p style="text-align: center;">Ineligible History</p> <ul style="list-style-type: none"> ▪ See §58.253(b), FC; and <p style="text-align: center;">Exempt Records (Sealing)</p> <ul style="list-style-type: none"> ▪ Sex Offender Registration Records ▪ Gang Database Records ▪ Records maintained by TJJJ and DPS for statistical purposes [§58.252, FC] 	<p style="text-align: center;">Ineligible – Database Info</p> <p style="text-align: center;">Exempt Records (Destruction)</p> <ul style="list-style-type: none"> ▪ Sex Offender Registration Records ▪ Gang Database Records ▪ Records maintained by TJJJ and DPS for statistical purposes [§58.252, FC] 	<p style="text-align: center;">Ineligible - Age and Offense</p> <p>Records are not eligible for permissible destruction unless they meet the age of offense requirements of the statute. [§58.264, FC]</p>
NOT TRUE DISPOSITION; NO PROBABLE CAUSE			
<p style="text-align: center;">Not True Disposition</p> <p>Mandatory and immediate sealing under former §58.003(d), FC was REPEALED in 2017. [SB 1304]</p>	<p style="text-align: center;">Not True Disposition</p> <p>Mandatory and immediate sealing under former §58.003(d), FC was REPEALED in 2017. [SB 1304]</p>	<p style="text-align: center;">No Probable Cause</p> <p>The court must order records destroyed upon a no probable cause finding, including records in JJIS, based on the criteria in §58.263, FC.</p>	
PROCESS			
<p>Process Initiation - Filing of Application</p> <p>The applicant or an attorney on behalf of the applicant submits the following information:</p> <ul style="list-style-type: none"> ▪ Applicant’s identifying Information ▪ Offense Information (offense, date, cause number, location, arresting agency, TRN/PID information, etc. ▪ Legal Basis for Sealing Eligibility ▪ Agencies and Entities w/ Records Verification <p>Fees</p> <p>Fees prohibited. [§58.256(a), FC].</p>	<p>Process Initiation –DPS/JJIS Search - Delinquent Conduct</p> <ul style="list-style-type: none"> ▪ DPS conducts JJIS/CCH search ▪ DPS sends notices to the CCH portal ▪ JPD retrieves and verifies; then sends eligibility list to court. <p>Eligibility Issues</p> <ul style="list-style-type: none"> ▪ If list contains discrepancies, JPD and DPS work together to update and correct, if needed ▪ If ineligible, no further action ▪ If eligible, the JPD forwards the list of referral and outcome information to court. [§58.254(f), FC]. <p>Process Initiation – TJJJ Search - CINS</p> <p>TJJJ CINS Offense History Report contains JPD monthly extract information on CINS-only history.</p> <ul style="list-style-type: none"> ▪ JPD verifies and sends eligibility list of referrals and outcomes to court. 	<p>No Probable Cause Finding</p> <ul style="list-style-type: none"> ▪ Intake finds NO PC; sends to Prosecutor; or ▪ Upon referral; Prosecutor finds NO PC [§58.263, FC] ▪ The court issues a destruction order. 	<p>Resolution or Written Certification</p> <p>The head of the following entities may authorize permanent destruction of closed juvenile matters by resolution or other form of written certification in accordance with §58.264, FC.</p> <ul style="list-style-type: none"> ▪ Juvenile Board, Law Enforcement and Prosecuting Attorney ▪ This provision does <u>not</u> apply to juvenile Clerk of Court records. [§58.264(f), FC] <p>State Library Retention Schedule</p> <p>These guidelines set destruction period for juvenile records under Local Schedules PS, DC and LC [13 Tex. Admin. Code, §7.125] or other local rules. [§58.264(a), FC]</p>

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HEARING			
<p>Options for Hearing The court may, at its discretion, order sealing with or without a hearing on the application. [§58.256(e); §58.257, FC]</p> <p>Denial of Application The court may <u>not</u> deny an application without a hearing. [§58.256(e), FC]</p> <p>Notice and Time for Hearing</p> <ul style="list-style-type: none"> ▪ The hearing must be held no later than the 60th day after receipt of an application. [§58.257,(a) and (b), FC] ▪ The court shall give reasonable notice of the hearing to: <ul style="list-style-type: none"> ▪ Applicant (subject of records) ▪ Applicant’s attorney, if any ▪ Prosecutor; ▪ Entities believed to possess records; or ▪ Other person. 	<p>No Hearing The juvenile court shall issue an order sealing all records within the 60th day after receiving notice from the juvenile probation department [§58.255(c), FC]</p>	<p>None A destruction order under §58.263, FC is triggered upon an administrative determination of no probable cause by the juvenile probation department intake or prosecuting attorney.</p>	<p>None Permissible destruction is an administrative determination by an agency or entity and exists for the efficiency and convenience of the record holders.</p>
ORDER			
<p>Order, With Application Sealing orders must contain the information in §58.258 (1-5), FC, including</p> <ul style="list-style-type: none"> ▪ Identifying information; ▪ Each instance of DC or CINS alleged or referred; ▪ Date and county of offense; ▪ If petition is filed --cause number, county, and court; and ▪ List of entities believed to possess records. <p>Upon Entry of Order</p> <ul style="list-style-type: none"> ▪ Sealing Order is issued within 60 days ▪ Entities must take actions required in statute. 	<p>Order, Without Application Sealing orders for sealing without application must contain the information required in §58.258 (1-5), FC. (<i>See With Application</i>)</p> <p>Upon Entry of Order</p> <ul style="list-style-type: none"> ▪ Sealing Order is issued within 60 days ▪ Entities must take actions required in statute. 	<p>Destruction Order A mandatory court order to destroy records must be issued.</p>	<p>Compliance with Entity Resolution The agency or entity may choose the appropriate method of destruction based on local policies and practices.</p>

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ACTIONS UPON RECEIPT OF ORDER			
<p>Sealing in Place Records are considered sealed if they are not destroyed but are stored in a manner that allows access to the records only by the custodian of records for the entity possessing the records. [§58.259(b), FC]</p> <p>Within 61 days...</p> <p>DPS must:</p> <ul style="list-style-type: none"> ▪ Limit access to records to only TJJD for research and statistical studies; ▪ Destroy other records, incl. DNA; ▪ Send written verification to juvenile court <p>TJJD must:</p> <ul style="list-style-type: none"> ▪ Seal all records other than those exempt under §58.252 (records for statistical purposes); and ▪ Send written verification to juvenile court. <p>Agency or Entity Providing Custody, Supervision, or Services must:</p> <ul style="list-style-type: none"> ▪ Seal all records ; and ▪ Send written verification to juvenile court. <p>Other Entity Receiving Order must:</p> <ul style="list-style-type: none"> ▪ Send all records to court; • Delete all index references; and • Send written verification of deletion to juvenile court. <p>No Records If entity has no records, shall provide written verification to court within 30 days. [§58.259(e), FC]</p> <p>Case Management (JCMS) Use the process for sealing records. No case management records should be deleted.</p>	<p>Sealing in Place <i>See actions for Sealing With Application.</i></p> <p>Case Management (JCMS) Use the process for sealing records. Case management records should NOT be deleted.</p>	<p>Upon Entry of Order Destruction involves the irretrievable elimination by record holders of physical and electronic records, except those exempt under §58.252 (records for statistical purposes).</p> <p>Case Management (JCMS) Use the process for sealing records. Case management records should NOT be deleted.</p>	<p>Compliance with Entity Resolution Destruction involves the irretrievable elimination by record holders of physical and electronic records, except those exempt under §58.252 (records for statistical purposes).</p> <ul style="list-style-type: none"> ▪ Physical records include computer files and information in other electronic storage media. ▪ Electronic records are considered destroyed if the electronic record and index to the record are deleted. ▪ Destroying paper records converted to electronic is not “destruction”. <p>Case Management (JCMS) Use the process for sealing records. Case management records should NOT be deleted.</p>

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INSPECTION AND RELEASE AFTER SEALING			
<p>Inspection and Release</p> <ul style="list-style-type: none"> • Subject of order petitions the court to unseal for any reason • Prosecutor can ask court to unseal to review for possible use in: <ul style="list-style-type: none"> – Capital prosecution; or – For enhancement under Sec. 12.42, Penal Code. • Court, TDCJ, TJJJ can request for sex offender screening purposes. [§58.260, FC] <p>Order to Inspect or Release</p> <ul style="list-style-type: none"> • Court may issue an order to release any or all records to the petitioner. 	<p><i>See inspection and release of records sealed with application.</i></p>	<p>None</p>	<p>None</p>
EFFECT			
<p>Juvenile All adjudications are vacated and proceedings are dismissed as if they never occurred. The subject of the record is not required to state he/she was subject of juvenile matter:</p> <ul style="list-style-type: none"> • in any proceeding • on housing, employment, admission, or licensure application • on application for other public or private benefit; and • Info in records and the fact that they once existed or denial of existence cannot be used against person in any manner • Subject cannot waive the protected status of the records <p>“Records Do Not Exist” After receipt of a sealing order, an entity must respond that no records relating to the person or matter exists. [§58.259(c), FC]</p>	<p><i>See effect of sealing (with/without application) on the juvenile subject and record holders.</i> [§2583.259 and 58.261, FC]</p> <p>“Records Do Not Exist” After receipt of a sealing order, an entity must respond that no records relating to the person or matter exists. [§58.259(c), FC]</p>	<p>Juvenile Case is non-suited or dismissed based on no probable cause and is treated for all purposes as if it never occurred.</p>	<p>Juvenile</p> <ul style="list-style-type: none"> ▪ Subject of the record has no statutory right to request this type of destruction or deny the existence of a record. <p>JJIS</p> <ul style="list-style-type: none"> ▪ Although records are destroyed at the local level, JJIS information is not removed. <p>Nydia D. Thomas, J.D. Special Counsel TJJJ Office of the General Counsel 11209 Metric Blvd • Building H Austin, Texas 78758 Legalhelp@tjjj.texas.gov 512.490.7121 <i>Transforming Young Lives & Creating Safer Communities</i></p>