

# Trending Questions

## Sealing of Juvenile Records

### PARTICIPANT HANDOUT



#### **Office of the General Counsel**

Texas Juvenile Justice Department  
11209 Metric Blvd • Building H  
Austin, Texas 78758  
P 512.490.7121  
W [www.tjjd.texas.gov](http://www.tjjd.texas.gov)  
E [legalhelp@tjjd.texas.gov](mailto:legalhelp@tjjd.texas.gov)





# Trending Questions

## Sealing Juvenile Records Data Coordinators Conference 2018



Senate Bill 1304, enacted during the 85<sup>th</sup> Legislative Session, contained important amendments to Chapter 58 of the Family Code pertaining to juvenile records. This law changed certain aspects of the age and offense criteria for sealing. In addition, the statutes assigned many of the administrative obligations for verifying eligibility, initiating proceedings, and processing sealing orders to juvenile probation departments, related court personnel, agencies and other entities that maintain physical and electronic records created in connection with juvenile proceedings.

The revisions to Chapter 58 were effective on September 1, 2017 and have generated a number of recurring questions to the Texas Juvenile Justice Department (TJJD) Legal Help Desk, JCMS Help Desk and DPS. Most questions centered on the initial steps toward implementing the sealing statutes and related administrative practices. Inquirers also asked for procedural guidance on matters not addressed in the legislation. This handout contains a summary of the most common trending questions collected over the past year. The accompanying resource information has been prepared as an educational service. The law summary, sample forms and other useful materials are available on the TJJD website.

---

### *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 inspected only under specific circumstances.

---

### *Did the new law change the sealing criteria?*

Yes. SB 1304 changed the eligibility and procedural requirements for: 1) sealing without application (§58.253-.255); and 2) sealing with application (§58.256).

---

### *What is the role of the juvenile probation department?*

Juvenile probation departments maintain the physical and electronic records and case management information on referrals, supervision, and court proceedings under Title 3 of the Family Code. For sealing without application, the juvenile probation department facilitates certain aspects of the sealing process. Tasks may include: 1) retrieving CJIS Worklist notifications; 2) conducting local review of case management systems; and 3) assisting with the identification of any officials and agencies holding juvenile records.

---

### *What is the role of the Department of Public Safety (DPS)*

The DPS computerized system is programmed to search the last reported disposition event date, age, and juvenile offense history and other criteria in Chapter 58, Subchapter C-1 of the Family Code. Using the county's ORI Number, designated probation staff can retrieve the worklist

uploaded by DPS that contains a list of juveniles who qualify for sealing. The DPS worklist identifies “candidates” for sealing but are not conclusive. If the juvenile probation department is aware of subsequent history, local review of eligibility may be necessary.

---

***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). Section 58.104, FC requires that case closures must be reported.

---

***Why does the Juvenile Worklist contain older records that date back to 1996?***

The provisions of the bill that revised Chapter 58 of the Family Code required changes to apply retroactively to all juvenile records regardless of when they were created. As such, the law reaches back to the 1996 launch date of the Juvenile Justice Information System (JJIS). The initial upload of the JJIS worklist includes these records.

---

***Will DPS include a person who is a registered sex offender on the Worklist?***

Section 58.256 prohibits sealing until the 10-year duty to register expires. DPS matches the Sex Offender Registry with information contained in the JJIS database to exclude registrants. When the person’s duty has expired, he or she must *apply* to have his or her records sealed.

---

***Is there a requirement to run a check of DPS records after receiving the certification from DPS?***

No. The certification indicates DPS records reflect the names of persons who are eligible for sealing. However, a probation department may

become aware of an error when preparing the list of referrals and disposition outcomes for the court. In such a case, the probation department should flag the record as “not qualified” and provide DPS with any disqualifying information.

---

***Do I need to email DPS each time the local department records show there is disqualifying history?***

No. Clicking the ‘not qualified’ button in the worklist notifies DPS as required in §58.254(d), FC. However, only cases that were determined to qualify based on the DPS CCH are included on the agency’s worklist. If a case does not qualify per the juvenile probation department’s review and determination, then more research should be done to find out if information is missing from CCH. That data should be sent to DPS to ensure the CCH is accurate and complete.

---

***If a juvenile was certified as an adult or given a determinate sentence, is he or she eligible for sealing?***

No. Juveniles who have been certified as adults or adjudicated for a determinate sentence offense are not eligible for sealing.

---

***Is there a requirement to check other states records to determine eligibility?***

No. The eligibility requirements are based on Texas records.

---

***Did anything change regarding the special sealing provisions?***

Yes. Under the current law, drug court, CINS prostitution, CINS sexting and human trafficking records cases must be sealed using the current procedures for sealing with and without application provisions. The prior law that allowed this was repealed.

---

***Can we seal when there has been a finding of not true/not guilty?***

Court dispositions with a not true/not guilty finding must be sealed using the current procedures for sealing with or without application. The prior law that allowed this was repealed.

---

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

No. These records must be sealed using the current procedures for sealing with or without application. The prior law that allowed this was repealed.

---

***Does the FBI seal Texas juvenile records?***

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

---

***What if there is no cause number because the case was handled non-judicially (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 delinquent conduct 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. Follow the instructions for sealing records in JCMS or other case management system.

---

***Should sealed juvenile records be sent to the clerk of court?***

Records that have been ordered sealed must be stored in a manner accessible only to the custodian of records. Instead, written verification must be sent to the court within 60 days. But, Sec. 58.259(d) requires “any other entities that receive a sealing order to send records to the issuing court.”

---

***Which county should seal when a juvenile who has been supervised on ICT has records in more than one county?***

When a case has been transferred for interim supervision (ICT), juvenile records are maintained in more than one county. 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 happens if a Petition to Inspect (Reopen) is filed after records have been sealed?***

There are only a few circumstances under Sec. 58.260, FC that authorize inspection of a sealed juvenile record: 1) the subject may ask the court to inspect for any reason; 2) the prosecutor seeks capital prosecution or enhancement; and 3) for sex offender screening purposes. If the court grants a petition to inspect, only the clerk of the court is required to be responsive to the order.

---

***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. It should be noted that under the recent legislative changes, juvenile records are only accessible to criminal justice agencies for criminal justice purposes and limited entities under §58.106, FC and related laws.

---

***Is there a Spanish version of the information handout on juvenile records?***

TJJD has not developed a Spanish version of the juvenile guide.

---

***When can a juvenile apply for sealing? Is an attorney required? Is there a filing fee?***

A juvenile may apply for sealing at age 18. A juvenile may apply for sealing before age 18 if at least two years have passed since the final discharge in every juvenile matter. An attorney is not required for an application for sealing, but is highly recommended. Courts and clerks may not charge a fee for filing an application for sealing, regardless of the form of the application.

---

***Is sealing case-by-case or is the entire record sealed?***

Sealing is for the entire record of juvenile matters that occurred in a county or judicial district. Juveniles with records in multiple counties may be subject to multiple sealing orders.

---

***Can the court order records to be sealed and destroyed at the same time?***

Court-ordered destruction is only available in cases of no probable cause. However, juvenile probation departments, prosecutors, and law enforcement entities are allowed to destroy records under the “spring cleaning” provisions of Section 58.264. Any of those entities could implement procedures that allow for destruction at the time the entity receives a sealing order for records that qualify for destruction under the statute. For example, records for juveniles referred for CINS-only history are entitled to be sealed at age 18; those records are also eligible to be destroyed at age 18. Juvenile board action is required to authorize destruction of the records on receipt of the CINS sealing order.

---

***If a juvenile was adjudicated for a felony, is he or she ever eligible for sealing without application?***

No. Juveniles adjudicated for a felony are not eligible for sealing without application. They are, however, eligible to *apply* for sealing, assuming the other requirements are met.

---

***Do we still need to inform agencies that the records are sealed?***

Yes. Even though the sealing without application process occurs “automatically,” agencies and entities known to have records must be provided with a sealing order, including DPS. Records in JJIS cannot be flagged as sealed unless DPS receives a sealing order.

---

*Can we save any notes we make during the sealing process on the juvenile's record in JCMS?*

---

Once a record is sealed, the attachments cannot be accessed. These notes would be permanently lost.

---

*Is it okay to include all offenses relating to a juvenile in one motion and order?*

---

Yes. The judge is ordering the juvenile's entire case history sealed. Some have suggested that this is probably the most efficient way to address multiple offenses, but it is a local drafting preference.

---

*Can we issue one sealing order for multiple juveniles?*

---

In response to the large number of cases on the initial DPS worklist and TJJJ CINS Report, a few counties have reportedly developed a single sealing order with a list of cases attached. It is best to coordinate closely with your local counsel, juvenile court, and court clerk regarding any potential confidentiality issues created by the presentation and recording of a single order that applies to multiple persons. Again, this is a local drafting preference.

---

*Where can sample sealing orders be found?*

---

The Juvenile Law Section Forms Committee has reviewed and updated sample sealing forms that are available on the Juvenile Law Section website at [www.juvenilelaw.org](http://www.juvenilelaw.org). Before using these documents, review them with your local counsel or juvenile prosecutor for legal sufficiency and local drafting preferences.

## **A Note from the Presenter**

*This paper closely tracks the statutory provisions contained in Chapter 58 of the Family Code and related laws. In addition, Chapter 15 of Texas Juvenile Law, 9th Edition, by Robert O. Dawson, contains a very thorough discussion of the laws pertaining to juvenile records in Texas. The trending questions were derived from FAQs submitted by the TJJJ Legal Help Desk (Jenna Reblin), the JCMS Team (Laura Marroquin) and DPS (Cassandra Ritchey). Other questions were updated by Kaci Singer for the article Summary of Juvenile Laws in Texas (2017) which is available on the TJJJ website. I hope that this will be a useful supplement to the power point presented during this training session.*

**Nydia D. Thomas, J.D.**

*Special Counsel*

*Legal Education & Technical Assistance Section - Office of the General Counsel*

*Texas Juvenile Justice Department*