

ACCESS TO RECORDS

Before helping a client seal juvenile records, it is important to know what records exist and, upon review of the records, determine the eligibility of records to be sealed. Attorneys should have no problem accessing a client's juvenile record from a court, juvenile probation department, or prosecutor:

- ⇒ **Family Code, § 58.007(b)(3)**: 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: (4) an attorney representing the child

The subject of records is also allowed to request the records for the purpose of sealing:

- ⇒ **Family Code § 58.007(b-1)**: A person who is the subject of the records is entitled to access the records for the purpose of preparing and presenting a motion or application to seal the records.

SEALING JUVENILE RECORDS WITHOUT AN APPLICATION

⇒ **MANDATORY SEALING WHEN COURT ENTERS A FINDING OF NOT TRUE (Family Code, § 58.2551)**

A juvenile court, on the court's own motion and without a hearing, shall immediately order the sealing of all records related to the alleged conduct if the court enters a finding that the allegations are not true.

⇒ **CONDUCT INDICATING A NEED FOR SUPERVISION (CINS) ONLY (Family Code, § 58.255)**

Eligibility: (1) has records relating to the conduct filed with the court clerk; (2) at least 18 years of age; (3) has not been referred to the juvenile probation department for delinquent conduct; (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.

Responsibilities:

- Juvenile probation department: give the juvenile court notice that a person's records are eligible for sealing and provide the juvenile court with a list of all referrals relating to that person received by the department and the outcome of each referral.
- Juvenile court: issue an order sealing all records relating to the person in the notice not later than the 60th day after the date the juvenile court receives notice from the juvenile probation department that the records are eligible for sealing

⇒ **DELINQUENT CONDUCT & CINS (Family Code, §§ 58.253, 58.254)**

Eligibility: (1) at least 19 years of age; (2) has not been adjudicated as having engaged in delinquent conduct or, if adjudicated for delinquent conduct, was not adjudicated for delinquent conduct violating a penal law of the grade of felony; (3) does not have any pending delinquent conduct matters; (4) has not been transferred by a juvenile court to a criminal court for prosecution under Section 54.02; (5) has not as an adult been convicted of a felony or a misdemeanor punishable by confinement in jail; and (6) does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail.

Responsibilities:

- Department of Public Safety: certify to the juvenile probation department that has submitted records to the juvenile justice information system that the records relating to a person referred to the juvenile probation department appear to be eligible for sealing
- Juvenile probation department: give notice of the receipt of the certification to the juvenile court and provide the court with a list of referrals received by the department relating to that person and the outcome of each referral (the JPD may determine the records are not, in fact, eligible for sealing)
- Juvenile court: issue an order sealing all records relating to the person named in the certification not later than the 60th day after the date the juvenile court receives notice from a juvenile probation department

SEALING ALL RECORDS WITH AN APPLICATION – Family Code § 58.256 – 58.257

⇒ THE APPLICATION (Family Code, § 58.256)

The court may not charge a fee for filing an application to seal records.

The application must include

- The person's full name, sex, race or ethnicity, date of birth, driver's license or identification card number, and social security number
- The conduct for which the person was referred to the juvenile probation department, including the date on which the conduct was alleged or found to have been committed (delinquent conduct and CINS)
- The cause number assigned to each petition relating to the person filed in juvenile court, if any, and the court in which the petition was filed
- A list of all entities the person believes have possession of records related to the person

Eligibility

- At least 17 years of age, or younger than 17 years of age and at least one year has elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department
- Does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court
- Was not transferred by a juvenile court to a criminal court for prosecution
- Has not as an adult been convicted of a felony
- Does not have any pending charges as an adult for a felony or a misdemeanor punishable by confinement in jail

Persons ineligible for sealing

- Received a determinate sentence for engaging in delinquent conduct eligible for a determinate sentence (§ 53.045) or habitual felony conduct (§ 51.031)
- Current required to register as a sex offender
- Committed to the Texas Juvenile Justice Department or to a post-adjudicative secure correctional facility (§ 54.04011), unless the person has been discharged from the agency to which the person was committed

The court may order the sealing of all records immediately without a hearing, or hold a hearing to determine whether to order the sealing of records.

⇒ THE HEARING (Family Code, § 58.257)

If the court decides to hold a hearing, the hearing must be held not later than the 60th day after the date the court receives the person's application.

The court shall give reasonable notice of the hearing to the applicant, the applicant's attorney who filed the application, the prosecuting attorney for the juvenile court, all entities named in the application, and any other individual or entity whose presence is requested by the applicant or the prosecutor.

ORDER SEALING RECORDS

⇒ CONTENTS OF ORDER (Family Code, § 58.258)

The order must include

- The person's full name, sex, race or ethnicity, date of birth, driver's license or identification card number, and social security number
- Each instance of conduct indicating a need for supervision and/or delinquent conduct alleged against the person or for which the person was referred to the juvenile justice system
- The date on which and the county in which each instance of conduct was alleged to have occurred
- The cause number assigned to each petition, if any were filed, and the court and county for each
- A list of entities believed to be in possession of the records that have been ordered sealed (recommend including mailing address and email address and/or fax number for each entity)